14

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM [redacted] 1964

No [redacted] 14

FIBREBOARD PAPER PRODUCTS CORPORATION,
PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 8, 1963
CERTIORARI GRANTED JANUARY 6, 1964

INDEX TO JOINT APPENDIX

EXHIBITS

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

September Term, 1962

No. 17,275

East Bay Union of Machinists, Local 1304, United Steelworkers of America, AFL-CIO and United Steelworkers of America, AFL-CIO, v. National Labor Relations Board

No. 17,468

Fibreboard Paper Products Corporation v. National Labor Relations Board

Before: Wright, Circuit Judge, in Chambers.

ORDER

The parties of the above-entitled cases having submitted a prehearing stipulation pursuant to Rule 38(k) of the General Rules of this Court, and the stipulation having been considered, the stipulation is hereby approved, except that if the petitioner in case No. 17,468 desires to intervene in case No. 17,275, it shall file a motion for leave to do so in conformity with Rule 38(f) of said Rules, and it is

ORDERED that the stipulation shall control further proceedings in these cases unless modified by further order of this court, and that the stipulation and this order shall be printed in the joint appendix herein.

No extensions of time for filing the briefs of the parties will be granted except for extraordinary and unforeseeable cause shown.

Dated: Dec. 20, 1962

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

[Caption Omitted]

PREHEARING CONFERENCE STIPULATION

Pursuant to Rule 38(k) of the Rules of this Court, the parties, subject to this Court's approval, hereby stipulate and agree as follows with respect to the parties, issues, and the procedure and dates for the filing of briefs and joint appendix.

I. The Parties

The petitioning company shall be permitted to intervene in Case No. 17,275 and the petitioning unions to intervene in Case No. 17,468.

II. Issues

1. Whether the Board's conclusion that Fibreboard was guilty of a refusal to bargain with the charging unions over its decision to contract out the maintenance work at its Emeryville plant (a) is adequately supported by findings of fact and (b) is supported by substantial evidence on the record as a whole.

2. Whether Fibreboard was under a duty to bargain with the charging unions over its decision to contract out the said maintenance work.

3. Whether the Board erred or exceeded its powers in ordering that Fibreboard resume its said maintenance operations and reinstate the individuals formerly employed therein with backpay from the date of the supplemental decision and order.

4. Whether the Board erred or exceeded its powers in granting the charging unions' petition for reconsideration and modifying its original decision and order without having given notice of its intention to do so and without having afforded an opportunity for hearing upon the proposed modification and whether the proceedings had before the Board were valid and proper.

5. Whether the Board acted upon the petitions or motions for reconsideration of its original decision and order and issued

its supplemental decision and order with reasonable dispatch as required by the Administrative Procedure Act.

6. Whether the Board abused its discretion under Section 10(c) of the Act by failing to order backpay to employees displaced by Fibreboard's contracting out of the maintenance work from the date of their displacement to the date of the Board's supplemental decision and order.

7. Whether the Board should have found that Fibreboard violated Section 8(a)(3) of the Act as alleged by the complaint.

III. The Briefs and the Joint Appendix

1. The record in this case shall be reduced to a joint appendix comprising the materials each party designates. Fifty copies of the record shall be printed under this stipulation; the required number of copies to be filed with the Court and the remaining copies to be divided among the parties.

2. Petitioners shall designate those portions of the record required to be printed by the Rules of Court and the additional portions of the record on which they rely, with the cost of printing these materials to be divided between them equally. The Board shall designate such additional material as it wishes to have printed and shall bear the cost of printing the material which it designates. The printer shall allocate these costs, as well as necessary mailing charges, and shall submit bills to each party.

3. The Unions shall serve their designation on the other parties on or before December 29, 1962; the Company shall serve its counter-designation on or before January 8, 1963; and the Board shall serve its counter-designation on or before January 18, 1963.

4. The Unions shall have responsibility for printing the joint appendix which they shall file, together with their brief, on or before February 18, 1963.

5. The Company's brief shall also be due on February 18, 1963.

6. The Board's brief shall be due on March 20, 1963.

7. Petitioners may file reply briefs on or before April 10, 1963.

8. It is further agreed that the parties and the Court may refer to any portion of the original transcript of record which has not been printed or reproduced, it being understood that any portions of the record thus referred to will be printed in a supplemental joint appendix if the Court so directs.

JERRY D. ANKER,
Attorney for the Unions

GERARD D. REILLY
Attorney for the Company

MARCEL MALLET-PROVOST
Assistant General Counsel
National Labor Relations Board

Dated at Washington, D. C., this 19th day of December, 1962

UNITED STATES OF AMERICA
Before the National Labor Relations Board
[Caption Omitted]

[AMENDED] COMPLAINT AND NOTICE OF HEARING

It having been charged by United Steelworkers of America, AFL-CIO, and East Bay Union of Machinists, Local 1304, United Steelworkers of America, AFL-CIO, herein collectively called Steelworkers, that Fibreboard Paper Products Corp., herein called Respondent, has been engaging in, and is engaging in unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act, the General Counsel of the National Labor Relations Board (herein called the Board), on behalf of the Board, by the undersigned Regional Director, issues this Complaint and Notice of Hearing pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 7, as amended:

I

A copy of the charge filed on July 31, 1959, was served by registered mail upon Respondent on August 3, 1959.

II

Respondent, a Delaware corporation, is engaged in the manufacture of paint, linoleum floor covering and tile, roofing and insulation materials and has establishments in various parts of the country. The establishment involved in this proceeding is located at Emeryville, California, and is known as Pabco Division. During the past year Pabco Division of Respondent has, in the course and conduct of its business, caused to be sold and transported from its plant products valued in excess of $1,000,000 to points outside the State of California. During the same period of time it has purchased and caused to be sent to it from points outside the State of California raw materials valued in excess of $1,000,000.

III

United Steelworkers of America, AFL-CIO, and East Bay Union of Machinists, Local 1304, United Steelworkers of Amer-

ica, AFL-CIO, and each of them, are labor organizations within the meaning of Section 2(5) of the Act.

IV

All maintenance mechanics and machinists, their helpers, working foremen, and firemen and engineers employed in the powerhouse, and the storekeeper in the central supply and store room of Respondent employed at its Pabco Division plant at Emeryville constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

V

At all times material herein Steelworkers have been the representative for the purpose of collective bargaining of a majority of the employees in the unit described in paragraph IV, above, and by virtue of Section 9(a) of the Act have been and are now the exclusive representative of all the employees in said unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment.

VI

The most recent of a series of collective bargaining contracts between Respondent and Steelworkers was effective from August 1, 1958, to and including July 31, 1959. On May 26, 1959, Steelworkers, acting pursuant to the terms of this contract, served upon Respondent notice of a desire to modify. Proposals for modifications were thereafter submitted by Steelworkers and repeated requests for meetings were made, but no negotiation meeting took place until July 30, 1959.

VII

On or about July 27, 1959, Respondent entered into an oral understanding to take effect August 1, 1959, with Fluor Maintenance, Incorporated, herein called Fluor, whereby Fluor, acting as an independent contractor, supplying its own employees, did undertake to perform all of the maintenance and powerhouse work, including all work theretofore performed by employees of Respondent in the unit described in paragraph IV, above.

VIII

On or about July 27, 1959, Respondent notified Steelworkers of its understanding with Fluor, and that on July 31, 1959, employees covered by its contract with Steelworkers would no longer be employed.

IX

On or about July 30, 1959, Respondent notified Steelworkers that the contract described in paragraph VI, above, would terminate July 31, 1959, and that, since thereafter it would have no employees in the unit covered by the contract, negotiations for a renewed agreement would be pointless.

X

On May 26, 1959, Steelworkers gave the notices of dispute required by Section 8(d)(3) of the Act to the Federal and State Mediation Service. At no time were such notices given by Respondent.

XI

On July 30, 1959, Respondent terminated all employees in the unit described in paragraph IV, above, and immediately thereafter commenced to carry on its maintenance operations in accordance with the terms of the agreement described in paragraph VII, above.

XII

By the acts and conduct set forth in paragraphs VIII, IX, X, and XI, above, occurring in conjunction with the matters set forth in paragraphs VI, VII, and VIII, above, Respondent has failed to fulfill its statutory duty to bargain as set forth in Section 8(d) of the Act and thereby has refused, and does now refuse, to bargain collectively with the Steelworkers as the exclusive representative of its employees in the unit described in paragraph IV, above.

XIII

By the acts set forth in paragraphs VIII, IX, X, and XI, above, occurring in conjunction with the matters set forth in paragraphs VI, VII, and VIII, above, Respondent did refuse,

and continues to refuse to bargain collectively with the Steelworkers and thereby did engage in, and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

XIV

By the acts and conduct set forth in paragraphs VIII, IX, X, and XI, above, occurring in conjunction with the matters set forth in paragraphs VII and VIII, above, Respondent did discriminate, and is discriminating in regard to the hire, tenure, terms or conditions of employment of the employees employed in the unit described in paragraph IV, above, thereby discouraging membership in Steelworkers, and Respondent did thereby engage in, and is thereby engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

XV

By the acts described above in paragraphs VIII, IX, X, and XI, occurring in conjunction with the matters set forth in paragraphs VII and VIII, above, Respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act, and did thereby engage in, and is thereby engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

XVI

The activities of Respondent described above in paragraphs VI through XI, above, occurring in connection with the operations of Respondent described in paragraph II, above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States, and tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce.

XVII

The acts of Respondent described above constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (3), and (5), and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 21st day of Sep-

tember, 1959, at ten o'clock in the forenoon, Pacific Daylight Saving time, in Room 720, 830 Market Street, San Francisco, California, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to said Complaint within ten (10) days from the service thereof and that unless it does so all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Twentieth Region, on this 2nd day of September, 1959, issues this Complaint and Notice of Hearing against Fibreboard Paper Products Corp., the Respondent named herein.

GERALD A. BROWN
Regional Director
National Labor Relations Board
Twentieth Region
830 Market Street
San Francisco, California

UNITED STATES OF AMERICA
Before the National Labor Relations Board

[Caption Omitted]

[AMENDED] ANSWER OF FIBREBOARD PAPER PRODUCTS CORPORATION TO COMPLAINT

Respondent Fibreboard Paper Products Corporation answers the Complaint heretofore issued herein as follows:

I

Respondent admits the allegations of paragraphs I, II and III of said Complaint.

II

Respondent admits all of the allegations contained in paragraph IV of said Complaint as amended.

III

Answering paragraph V of said Complaint, respondent admits and alleges that at all material times mentioned in the Complaint, maintenance employees of respondent at its Pabco Division Plant employed as steamfitters have been represented for purposes of collective bargaining by the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 342; that at all of said times maintenance employees of respondent at its said plant employed as riggers have been represented for the purposes of collective bargaining by the International Association of Bridge, Structural, Ornamental, Reinforced Iron Workers, Riggers, Stone Derrickmen, Machinery, House Movers, and Sheeters, Local Union 378; that at all of said times maintenance employees of respondent at its said plant employed as carpenters have been represented for purposes of collective bargaining by the Bay Counties District Council of Carpenters, Local Union 36, of the United Brotherhood of Carpenters and Joiners of America; that at all of said times maintenance employees of respondent employed at said plant as electricians have been represented for purposes of collective bargaining by Local Union No. 595 of the International Brotherhood of Electrical Workers; and that at all of

said times employees of respondent at its said plant employed in the unit described in paragraph IV of the Complaint as amended have been represented for the purpose of collective bargaining of a majority of said employees by East Bay Union of Machinists, Local 1304, United Steel Workers of America (hereinafter called Steelworkers). Respondent denies all of the allegations of said paragraph V not herein expressly admitted.

IV

Answering paragraph VI of said Complaint, respondent admits and alleges that the most recent of a series of collective bargaining contracts between respondent and Steelworkers was effective from August 1, 1958, to and including July 31, 1959; that on May 26, 1959, Steelworkers, acting pursuant to the terms of said contract, served upon respondent a notice of which a true copy is hereto attached as Exhibit A; that contract proposals were submitted by Steelworkers by letter dated June 15, 1959; that negotiating meetings took place on July 27, 1959, July 30, 1959, and August 21, 1959, and that respondent bargained with Steelworkers regarding all matters as to which bargaining was requested. Respondent denies all of the allegations of said paragraph VI not expressly herein admitted.

V

Answering paragraph VII of said Complaint, respondent admits and alleges that on July 27, 1959, respondent decided to contract out all of the maintenance and powerhouse work at its Emeryville Plant, effective August 1, 1959; that on July 28, 1959, it selected Fluor Maintenance, Incorporated (hereinafter called Fluor) as the contractor and entered into negotiations with Fluor for a written contract; and that on August 4, 1959, respondent and Fluor executed a contract in writing whereby Fluor, acting as an independent contractor supplying its own employees, did undertake to perform, commencing as of August 1, 1959, all of the said maintenance and powerhouse work, including all work theretofore performed by employees of respondent theretofore represented by Steelworkers as set forth in paragraph III above. Respondent denies all of the allegations of said paragraph VII not herein expressly admitted.

VI

Answering paragraph VIII of said Complaint, respondent admits and alleges that on July 27, 1959, respondent met with Steelworkers and advised Steelworkers that it intended to contract out said maintenance and powerhouse work commencing August 1, 1959, and further advised Steelworkers that effective with shifts commencing after midnight, July 31, 1959, employees theretofore employed by respondent in maintenance and powerhouse work, including employees covered by its said contract with Steelworkers, would be terminated and that respondent proposed to make provision for severance pay or termination allowances for employees so terminated; that on the same date, July 27, 1959, respondent mailed to Steelworkers letters of which true and correct copies are attached hereto as Exhibits B and C and handed copies thereof to representatives of Steelworkers; and that on July 28, 1959, respondent advised Steelworkers that it had selected Fluor as the contractor to perform said work. Respondent denies all of the allegations of said paragraph VIII not expressly herein admitted.

VII

Answering paragraph IX of said Complaint, respondent admits and alleges that on or about July 29, 1959, respondent received from Steelworkers a letter of which a true and correct copy is attached hereto as Exhibit D, and that on July 30, 1959, respondent mailed to Steelworkers at letter of which a true and correct copy is hereto attached as Exhibit E; that on July 30, 1959, respondent met with Steelworkers; that Steelworkers demanded that respondent execute a new or renewed contract containing the modifications theretofore proposed by Steelworkers and that in response to said demand, respondent replied that since it would have no employees in the bargaining unit theretofore covered by said contract, negotiations for a renewed contract would be pointless. Respondent denies all of the allegations of said paragraph IX not herein expressly admitted.

VIII

Answering paragraph X of said Complaint, respondent is without knowledge as to whether or not Steelworkers, on May 26, 1959, gave the notices of dispute required by Section

8(d)(3) of the Act to the Federal and State Mediation Services and for that reason denies the said allegation. Respondent admits that it did not give a notice of dispute to the Federal and State Mediation Services but denies that any such notice was required of it by Section 8(d)(3) of the Act.

IX

Answering paragraph XI of said Complaint, respondent admits and alleges that effective with shifts commencing after midnight, July 31, 1959, it terminated all employees theretofore employed by it in maintenance and powerhouse work, including employees represented by Steelworkers as aforesaid; that at about 6:00 o'clock P.M., on July 31, 1959, Steelworkers established mass picket lines at and about said plant, and that from that date until August 18, 1959, Steelworkers, by means of mass picketing, violence and threats of violence, prevented employees of Fluor from entering said plant, with the result that no maintenance work was performed in said plant during said period; that on August 18, 1959, employees of Fluor gained access to said plant by the use of enclosed vans or trucks and that ever since said date last mentioned, maintenance operations in said plant have been performed by Fluor in accordance with the terms of said written contract mentioned in paragraph V above. Respondent denies all of the allegations of said paragraph XI not herein expressly admitted.

X

Respondent denies all of the allegations contained in paragraphs XII, XIII, XIV, XV, XVI and XVII of said Complaint.

WHEREFORE, Respondent prays that it be hence dismissed.

MARION B. PLANT
BROBECK, PHLEGER & HARRISON
111 Sutter Street
San Francisco 4, California
Attorneys for Respondent
Fibreboard Paper Products Corporation

EXHIBIT A

District 38
UNITED STEELWORKERS OF AMERICA
AFL-CIO
610 Sixteenth Street • Rooms 219-220 Pacific Building
Oakland 12, California • Sub-District 3
Telephone TWinoaks 3-5486
Charles J. Smith, Director

May 26, 1959

Fibreboard Paper Products Corporation
P. O. Box 4317
Oakland 23, California
Attention: Mr. R. C. Thumann, Director of
Industrial Relations

Gentlemen:

Pursuant to the provisions of the Labor Management Relations Act, 1947, you are hereby notified that the Union desires to modify as of August 1, 1959 the collective bargaining contract dated July 31, 1958, now in effect between the Company and the Union.

The Union offers to meet with the Company at such early time and suitable place as may be mutually convenient, for the purpose of negotiating a new contract.

Very truly yours,

UNITED STEELWORKERS OF AMERICA
By Wm. F. Stumpf, Representative
By Lloyd Ferber, Business Rep., Local 1304

cc. Charles J. Smith, Director
Local 1304
International—Pittsburgh

EXHIBIT B

FIBREBOARD
Paper Products Corporation
P. O. Box 4317 • Oakland 23, California

July 27, 1959

Mr. Lloyd H. Ferber, Business Representative
EAST BAY UNION OF MACHINISTS, LODGE 1304
United Steelworkers of America, AFL-CIO
3637 San Pablo Avenue
Emeryville 8, California

SUBJECT: EMERYVILLE PLANT AGREEMENT

Under date of May 26, 1959, Mr. Ferber, you notified us of your desire to modify our collective bargaining agreement with your Union dated September 24, 1958, relative to maintenance employees at our Emeryville plant, and of your desire to meet for the purpose of negotiating a new contract to be effective August 1, 1959. Under date of June 15, 1959, you forwarded your contract proposals.

For some time we have been seriously considering the question of letting out our Emeryville maintenance work to an independent contractor, and have now reached a definite decision to do so effective August 1, 1959.

In these circumstances, we are sure you will realize that negotiation of a new contract would be pointless. However, if you have any questions, we will be glad to discuss them with you.

R. C. Thumann
Director of Industrial Relations

EXHIBIT C

FIBREBOARD
Paper Products Corporation
P. O. Box 4317 • Oakland 23, California

July 27, 1959

Mr. Wm. F. Stumpf, Representative
UNITED STEELWORKERS OF AMERICA
610 Sixteenth Street—Rooms 219-220
Oakland 12, California

SUBJECT: EMERYVILLE PLANT AGREEMENT

Under date of May 26, 1959, Mr. Stumpf, you notified us of your desire to modify our collective bargaining agreement with your Union dated September 24, 1958, relative to maintenance employees at our Emeryville plant, and of your desire to meet for the purpose of negotiating a new contract to be effective August 1, 1959. Under date of June 15, 1959, you forwarded your contract proposals.

For some time we have been seriously considering the question of letting out our Emeryville maintenance work to an independent contractor, and have now reached a definite decision to do so effective August 1, 1959.

In these circumstances, we are sure you will realize that negotiation of a new contract would be pointless. However, if you have any questions, we will be glad to discuss them with you.

R. C. Thumann
Director of Industrial Relations

EXHIBIT D

District 38
UNITED STEELWORKERS OF AMERICA
AFL-CIO
810 Sixteenth Street • Rooms 219-220 Pacific Building
Oakland 12, California • Sub-District 3
Telephone TWinoaks 3-5466
Charles J. Smith, Director

July 29, 1959

Fibreboard Paper Products Corporation
P. O. Box 4317
Oakland, California

Attention: Mr. R. C. Thumann,
Director of Industrial Relations

Gentlemen: Re: Subject: Emeryville Plant Agreement
Reference is made to your letter of July 27, 1959.

We interpret your letter to mean that you are attempting to cancel your present agreement with us. If that is your intention, you are too late. We direct you to the provision of the agreement which requires that you should have given us at least sixty (60) days notice of cancellation prior to the July 31, 1959 expiration date.

In the absence of such notice, the contract has been automatically renewed for another year, subject, of course, to your obligation to meet with us at once to discuss the proposed modifications which we sent you, following our notice of May 26 for modifications of the existing agreement.

We trust that you will not lock out the employees covered by our agreement, and that you will not consummate the plan outlined in your letter of July 27th. We call upon you to meet with us at once.

Very truly yours,

UNITED STEELWORKERS OF AMERICA,
AFL-CIO

By Wm. F. Stumpf, Representative
By Lloyd Ferber, Business Rep., Local 1304

cc. Charles J. Smith, Director
Local 1304
International—Pittsburgh
Jay Darwin

EXHIBIT E

July 30, 1959

Messrs. Wm. F. Stumpf, Representative, and
Lloyd H. Ferber, Business Representative, Local 1304
UNITED STEELWORKERS OF AMERICA
610 Sixteenth Street—Room 219-220
Oakland 12, California

Gentlemen, the following is in reply to your letter of July 29, 1959.

1. The introductory provisions of our Agreement with your Union provide in pertinent part:

> "This Agreement shall continue in full force and effect to and including July 31, 1959, and shall be considered renewed from year to year thereafter between the respective parties unless either party hereto shall give written notice to the other of its desire to change, modify, or cancel the same at least sixty (60) days prior to expiration."

Under date of May 26, 1959, you notified us of your desire to modify the Agreement and to meet with us for the purpose of negotiating a new Agreement to be effective August 1, 1959. Under the provision quoted above, our Agreement therefore will expire at midnight July 31, 1959, and will not be automatically renewed. See *American Woolen Company*, 57 N.L.R.B. 647. Our letter of July 27, 1959, was not an attempt to cancel the Agreement but was written in contemplation of the fact that it will, by its terms, expire at midnight, July 31, as set forth above.

2. Aside from the foregoing, the Agreement does not prohibit us from letting work to an independent contractor, and we have the right to do so. See *Amalgamated Association, etc.* v. *Greyhound Corporation*, 231 F(2d) 585.

3. While it will be necessary for us to lay off or terminate employees heretofore performing the work to be taken over by the contractor, we do not contemplate any lockout.

4. As we stated in our letter of July 27, it appears to us that since we will have no employees in the bargaining unit covered by our present Agreement, negotiation of a new or renewed Agreement would appear to us to be pointless. However, we repeat that we will be glad to discuss with you at your convenience any questions that you may have.

R. C. THUMANN
Director of Industrial Relations

Charles J. Smith, International-Pittsburgh, Jay Darwin

UNITED STATES OF AMERICA

Before the National Labor Relations Board

[Caption Omitted]

SUPPLEMENTAL DECISION AND ORDER

On March 27, 1961, the Board issued a Decision and Order in this proceeding,[1] finding that the Respondent, Fibreboard Paper Products Corporation, had not committed unfair labor practices within the meaning of Sections 8(a)(1), (3) and (5) or Section 8(d) of the Act as alleged in the complaint, and dismissing the complaint.

On May 15, 1961, the Charging Unions filed a petition for reconsideration of the Board's Decision and Order, and on June 7, 1961, the General Counsel filed a motion for reconsideration and clarification. On May 25, 1961, the Respondent filed an answer to the Charging Party's petition for reconsideration, and on June 15, 1961, filed an answer to the General Counsel's motion.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel.

Upon consideration of the petition filed by the Charging Unions, the motion filed by the General Counsel, the answers filed by the Respondent, and the entire record in the case, including the exceptions and briefs heretofore filed, the Board hereby grants the Charging Unions' petition for reconsideration to the extent indicated below.[2]

In its original Decision and Order, a majority of the Board concluded that the Respondent did not violate Section 8(a)(5) when it unilaterally subcontracted its maintenance work for economic reasons without first negotiating with the duly designated bargaining agent over its decision to do so. In their

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[1] 130 NLRB 1558. Member Fanning dissented. Chairman McCulloch and Member Brown took no part in that Decision.

[2] The Respondent's request for oral argument is denied as the record of the prior proceeding, together with the documents filed since issuance of the decision and order, adequately present the issues and the positions of the parties. On July 11, 1962, Respondent filed a petition to reopen the record for the introduction of further evidence relating to the reduction of its maintenance department work force. On July 16, 1962, the Charging Unions filed an opposition thereto. The Respondent's petition is denied as the issues raised therein are basically matters of compliance which are more properly treated at the compliance stage of the proceedings.

view, Respondent's decision to subcontract was a management prerogative having no impact on the conditions of employment within the existing maintenance unit, and hence need not have been submitted to the Charging Unions before that decision was effectuated. The dissenting opinion, relying on the Supreme Court's decision in *Telegraphers* v. *Chicago and N.W.R. Co.*, 362 U. S. 330, and related court and Board cases, held that an economic decision to subcontract unit work was encompassed within the term "wages, hours and other terms and conditions of employment" and was a mandatory subject of collective bargaining under the Act.

In the recent *Town and Country Manufacturing Company, Inc.*, 136 NLRB No. 111, the Board had occasion to reexamine this issue. A majority of the Board in that case concluded that a management decision to subcontract work out of an existing unit, albeit for economic reasons, was a mandatory bargaining subject. To the extent that the majority opinion in *Fibreboard* held otherwise, that holding was overruled. Accordingly, for the reasons and considerations expressed in *Town and Country*, and in the dissenting opinion in the original *Fibreboard* case, we find that Respondent's failure to negotiate with the Charging Unions concerning its decision to subcontract its maintenance work constituted a violation of Section 8(a)(5) of the Act.

The issue in this case is *not*, as stated in the dissent, "whether business management is free to subcontract work in the interest of the more efficient operation of its business." Nor is the Board majority holding, anymore than it did in the *Town and Country* case, that a decision to subcontract is foreclosed to management unless it is a negotiated decision satisfactory to the union.

The Board majority stated explicitly in the *Town and Country* case[3] that the duty to bargain about a decision to subcontract work

> in nowise restrains an employer from formulating or effectuating an economic decision to terminate a phase of his business operations. Nor does it obligate him to yield to a union's demand that a subcontract not be let, or that it be let on terms inconsistent with management's business judgment. Experience has shown, however, that candid discussion of mutual problems by labor and management

[3] 136 NLRB No. 111 at p. 7.

> frequently results in their resolution with attendant benefit to both sides. Business operations may profitably continue and jobs may be preserved. Such prior discussion with a duly designated bargaining representative is all that the Act contemplates. But it commands no less.[4]

Our dissenting colleague suggests that the Board should exercise its discretion in this case by finding that an employer's decision to subcontract work theretofore performed by its employees is not a mandatory subject of bargaining. We do not, however, believe that the issue presented is one within the Board's discretion. In our opinion, the question is foreclosed by the Supreme Court's decision in the *Telegraphers*[5] and other cases.[6]

In *Telegraphers*, the union notified the railroad under §6 of the Railway Labor Act, 45 U.S.C. §156,[7] that it wanted to negotiate with the railroad to amend the current bargaining agreement by adding the following rule:

> No position in existence on December 3, 1957, will be abolished or discontinued except by agreement between the carrier and the organization.

Insofar as here pertinent, the railroad contended that the union's demand did not raise a bargainable issue and refused to negotiate. The District Court held that the contract proposal related to the statutory "rates of pay, rules and working conditions" and was therefore subject to the bargaining obli-

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[4] In the original *Fibreboard* case, Member Fanning similarly said in his dissent (130 NLRB 1558, 1565):

Clearly, this duty to bargain [about the decision to subcontract] is not an order restraining the employer from subcontracting such work. The duty to bargain does not include an obligation to yield. Had the employer bargained about its decision to subcontract the maintenance work in the instant case, it is entirely possible that the parties could have arrived at a solution to the problem short of subcontracting the entire maintenance operation. It seems to me that this possibility is the goal of sound collective bargaining, which the Act is designed to foster and encourage.

[5] *Order of Railroad Telegraphers* v. *Chicago & N.W.R. Co.*, 362 U. S. 330.

[6] *Teamsters Union* v. *Oliver*, 358 U. S. 283; 362 U. S. 605; *Steelworkers* v. *Warrior & Gulf Co.*, 363 U. S. 574.

[7] "Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting *rates of pay, rules, or working conditions* . . . ." (Emphasis supplied)

gations under the Railway Labor Act.[8] On appeal the Court of Appeals reversed, holding that the finding that the proposed contract change related to "rates of pay, rules or working conditions" and was thus a bargainable matter was clearly erroneous.[9] The Supreme Court, in turn, reversed the Court of Appeals and endorsed the finding of the District Court. The Supreme Court said (363 U. S. at 336):

> Plainly the controversy here relates to an effort on the part of the union to change the "terms" of an existing collective bargaining agreement. The change desired just as plainly referred to "conditions of employment" of the railroad's employees who are represented by the union. The employment of many of these station agents inescapably hangs on the number of railroad stations that will be either completely abandoned or consolidated with other stations. And, in the collective bargaining world today, there is nothing strange about agreements that affect the permanency of employment . . .
>
> We cannot agree with the Court of Appeals that the union's effort to negotiate about the job security of its members "represents an attempt to usurp legitimate managerial prerogative in the exercise of business judgment with respect to the most economical and efficient conduct of its operations."

In describing the scope of collective bargaining required under the Railway Labor Act, the Court used language equally applicable to the bargaining obligation under the National Labor Relations Act. The Court said (363 U. S. at 338):

> In an effort to prevent a disruption and stoppage of interstate commerce, the trend of legislation affecting railroads and railroad employees has been to broaden, not narrow, the scope of subjects about which workers and railroads may or must negotiate and bargain collectively. Furthermore, the whole idea of what is bargain-

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[8] The Railway Labor Act, 45 U.S.C. §152, First, provides:

"It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning *rates of pay, rules, and working conditions*. . . . ." (Emphasis supplied)

[9] *Chicago & N.W.R. Co.* v. *Order of Railroad Telegraphers*, 264 F.2d 254, 260 (C.A. 7).

able has been greatly affected by the practices and customs of the railroads and their employees themselves. It is too late to argue that employees can have no collective voice to influence railroads to act in a way that will preserve the interests of the employees as well as the interests of the railroad and the public at large.

The dissent's attempt to distinguish the *Telegraphers* decision on the basis that railroads are "impressed with a public interest" is completely misplaced. There is no evidence that the obligation to bargain with respect to "wages, hours and other terms and conditions of employment" imposed by Section 8(d) of the National Labor Relations Act was intended to be more restrictive than the same obligation with respect to "rates of pay, rules and working conditions" under the Railway Labor Act. The evidence is to the contrary. The Supreme Court has said that "No distinction between public utilities and national manufacturing organizations has been drawn in the administration of the Federal Act. . . ." [10] The courts have also specifically held that the bargaining obligation under the National Labor Relations Act is *broader* in scope than that under the Railway Labor Act.[11] Moreover, *a priori* there would seem to be less need for imposing a broader obligation under the latter Act than under the former inasmuch as there are public agencies specifically created to protect the public interest in railroad cases. Finally, it is clear the "public interest" argument was not controlling in *Telegraphers* inasmuch as that argument was basic to the dissent which the majority in *Telegraphers* rejected.[12]

Further, in *Teamsters Union* v. *Oliver* 358 U. S. 283, decided before *Telegraphers*, the Supreme Court cited with ap-

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[10] *Amalgamated Assn. of Street, Electric Railway Motor Coach Employees* v. *W.E.R.B.*, 340 U. S. 383, 391.

[11] *Inland Steel Company* v. *N.L.R.B.*, 170 F.2d 247 (C.A. 7) cert. denied, 336 U. S. 960. The substantial identity of the bargaining obligation under the two acts is manifested in *Elgin Railway Trainmen*, F.2d (C.A. 7), 50 LRRM 2148, decided May 4, 1962, where the Court held that pensions were a bargainable matter under the Railway Labor Act citing the *Inland Steel* decision, where a similar holding had been made under the National Labor Relations Act.

[12] See the dissenting opinion of Mr. Justice Whittaker, 362 U. S. 345-364.

proval the Board's decision in the *Timken Roller Bearing*[13] case with specific reference to the holding therein that subcontracting was a mandatory subject of bargaining. And in the *Warrior & Gulf* case,[14] decided after *Telegraphers*, the Supreme Court held that a union complaint against an employer's contracting out of work was subject to the contract grievance procedure, including arbitration, notwithstanding a provision in the contract which excluded from arbitration "matters which are strictly a function of management." The Court pointed out that "Contracting out work is the basis of many grievances; and that type of claim is grist in the mills of the arbitrators." [15]

We conclude that the dissent is wrong in its reasoning, wrong in its interpretation of the *Telegraphers* case and wrong in its prediction of the dire results which may be expected to flow from the present decision. As the Supreme Court has noted, subcontracting or contracting out is a subject extensively dealt with in today's collective bargaining.[16] The present decision does not innovate; it merely recognizes the facts of life created by the customs and practices of employers and unions.[17] Contrary to our dissenting colleague, we are confident that those employers and unions who are bargaining in good faith will find it neither difficult nor inconsistent with sound business practices to include questions relating to subcontracting in their bargaining conferences.

The Remedy

We have found that Respondent violated Section 8(a)(5) by unilaterally subcontracting its maintenance work without bargaining with the Charging Unions over its decision to do

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[13] *Timken Roller Bearing Co.*, 70 NLRB 500, 518, reversed on other grounds, 161 F. 2d 949 (C.A. 6).

[14] *Steelworkers* v. *Warrior & Gulf Co.*, 363 U. S. 574.

[15] 363 U. S. at 584.

[16] See Lunden, Subcontracting Clauses in Major Contracts, 84 Monthly Labor Rev. 579-584, 715-723; Note, Arbitration of Subcontracting Disputes: Management Discretion vs. Job Security, 37 New York University Law Rev. 523.

[17] See *UAW, Local 391* v. *Webster Electric Co.*, F.2d (C.A. 7), 49 LRRM 2592, decided February 7, 1962, where the court held that an employer violated its collective bargaining contract by subcontracting janitorial work and laying off its janitorial employees even though the contract contained no prohibition against subcontracting. The court implied such an agreement from the union shop clause in the contract is applicable to janitors.

so. We shall therefore order that Respondent cease and desist from unilaterally subcontracting unit work or otherwise making unilateral changes in their terms and conditions of employment without consulting their designated bargaining agent. As we stated in *Town and Country* "It would be an exercise in futility to attempt to remedy this type of violation if an employer's decision to subcontract were to stand. No genuine bargaining over a decision to terminate a phase of operations can be conducted where that decision has already been made and implemented." To adapt the remedy "to the situation which calls for redress." [18] we shall order the Respondent to restore the *status quo ante* by reinstituting its maintenance operation and fulfilling its statutory obligation to bargain.[19] Where that obligation has been satisfied after the resumption of bargaining, Respondent may, of course, lawfully subcontract its maintenance work.

As we further stated in *Town and Country*, "it would be equally futile to direct an employer to bargain with the exclusive bargaining representative of his employees over the termination of jobs which they no longer hold. Since the loss of employment stemmed directly from their employer's unlawful action in bypassing their bargaining agent, we believe that a meaningful bargaining order can be fashioned only by directing the employer to restore his employees to the positions which they held prior to this unlawful action." Accordingly, we shall order that Respondent offer reinstatement to the employees engaged in the maintenance operation to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges. We shall also order that Respondent make them whole for any loss of earnings suffered as a result of Respondent's unlawful action in bypassing their bargaining agent and unilaterally subcontracting their jobs out of existence.[20] Backpay shall

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[18] See *N.L.R.B.* v. *Mackay Radio & Tel. Co.*, 304 U. S. 333, 348.

[19] We do not believe that requirement imposes an undue or unfair burden on Respondent. The record shows that the maintenance operation is still being performed in much the same manner as it was prior to the subcontracting arrangement. Respondent has a continuing need for the services of maintenance employees; and, Respondent's subcontract is terminable at any time upon 60 days notice.

[20] See *West Boylston Manufacturing Company of Alabama*, 87 NLRB 808, 812-813. Compare *Piasecki Aircraft Corp.* v. *N.L.R.B.*, 280 F.2d 575, 591-592 (C.A. 3); *Editorial "El Imparcial" Inc.*, v. *N.L.R.B.*, 278 F.2d 184, 187 (C.A. 1).

be based upon the earnings which they normally would receive from the date of this Supplemental Decision and Order to the date of Respondent's offer of reinstatement, less any net interim earnings, and shall be computed on a quarterly basis in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289; *N.L.R.B.* v. *Seven-up Bottling Company of Miami, Inc.*, 344 U. S. 344.[21]

ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Fibreboard Paper Products Corporation, Emeryville, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with East Bay Union of Machinists, Local 1304, United Steelworkers of America, AFL-CIO and United Steelworkers of America, AFL-CIO, as the exclusive bargaining representative of the Respondents employees in the appropriate maintenance and powerhouse unit with respect to wages, hours, and other terms and conditions of employment; and from unilaterally subcontracting unit work or otherwise unilaterally changing the wages, hours, and other terms and conditions of employment of unit employees without prior bargaining with the above-named Unions or any other union they may select as their exclusive bargaining representative.

(b) In any other manner, interfering with, restraining, or coercing employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist the above-named Unions, or any other labor organization, to bargain collectively through representatives of

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[21] In the special circumstances of this case where the Board, upon reexamination of the relevant legal principles, has reversed its own prior determination that Respondent had not by its conduct violated the Act, we believe it would be wholly inequitable to hold Respondent liable for backpay from the date it initially terminated the employment of the individuals here involved. Accordingly, we find here the "unusual circumstances" to which reference was made in *A.P.W. Products, Inc.*, 137 NLRB No. 7, which would otherwise dictate more extended relief by way of backpay.

their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Reinstitute the maintenance operation previously performed by its employees represented by East Bay Union of Machinists, Local 1304, United Steelworkers of America, AFL-CIO, and offer to those employees immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay suffered by them in the manner set forth in the section above entitled "The Remedy."

(b) Bargain collectively with East Bay Union of Machinists, Local 1304, United Steelworkers of America, AFL-CIO, and United Steelworkers of America, AFL-CIO, as the exclusive bargaining representative of the Respondent's employees in the appropriate maintenance and powerhouse unit with respect to wages, hours, and other terms and conditions of employment.

(c) Preserve, and upon request, make available to the Board and its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary or useful to determine the amount of backpay due and the rights of reinstatement under the terms of this Order.

(d) Post at its plant, in Emeryville, California, copies of the notice attached hereto marked "Appendix." [22] Copies of said notice, to be furnished by the Regional Director

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[22] In the event that this Order is enforced by a decree of the United States Court of Appeals, the Notice shall be amended by substituting for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals Enforcing an Order."

for the Twentieth Region, shall, after being duly signed by the Respondent's representatives, be posted by Respondent immediately upon receipt thereof, and maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for the Twentieth Region, in writing, within 10 days from the date of this Supplemental Decision and Order, what steps have been taken to comply herewith.

Dated, Washington, D. C.

FRANK W. McCULLOCH, Chairman
JOHN H. FANNING, Member
National Labor Relations Board

(SEAL)

PHILIP RAY RODGERS, Member, dissenting:

I did not agree to the belated reconsideration by the Board of the previously issued and published decision in this case. I do not now agree to the reversal of that prior decision.

We are dealing here with a matter of basic import to the economy generally, and one of immediate concern to every person or group of persons engaged in private business in this country—the matter of how far and to what extent, if any, business management is free to make those economic decisions necessary to the improvement, or indeed the survival, of the business concern with which it is identified. More specifically, this case, like the recently issued *Town and Country*[23] case, poses the question of whether business management is free to subcontract work in the interest of the more efficient operation of its business.

In *Town and Country*, the majority has held, and here holds, in effect, that such decision is foreclosed to management; that such decision, if made at all, must be a negotiated decision, satisfactory to the union.[24] For any decision made solely by management and based solely on economic factors con-

[23] *Town & Country Manufacturing Company, Inc.*, 136 NLRB No. 111.

[24] Contrary to the majority's assertion, I am by no means suggesting that this is an area where the Board has "discretion" to exercise as they see fit. My view is that it is not within the province of the Board to compel management to bargain over one of its prerogatives.

stitutes a violation of this law, which violation must be remedied by this Agency's ordering the concern involved to reinstitute an uneconomic, outmoded or obsolete operation, and to remit back wages to all former employees "adversely affected" by such managerial action.[25] This is a drastic penalty.

To be sure, in describing what is required by business management in such circumstances as these, my colleagues have sought to soften the impact of their ruling by such statements as the following: "This obligation *in no way restrains an employer* from . . . effectuating an economic decision to terminate a phase of his business operations . . . *a prior discussion* with the duly designated bargaining representative is all that the Act contemplates." [26] (Emphasis supplied)

If the foregoing social niceties represented all that is involved, one could not object. But the fact remains that by making such management decisions the subject of *mandatory* rather than *permissive* bargaining, my colleagues have, as they well know, thrust the entire question squarely into the arena of economic struggle and industrial turmoil where strikes, picket lines, charges, counter-charges, protracted litigation, and many other aspects of economic power possessed by a union are "protected" by this Board[27] and are, therefore,

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[25] In *Town & Country, supra,* the majority ordered the employer to reinstitute its trucking operations, reemploy its former drivers, and to pay them back wages. In the instant case, the majority is ordering the employer to reestablish its maintenance department, reemploy the former employees of that department, and to pay them back wages.

[26] *Town and Country, supra.* We are not here considering the terms of an existing collective bargaining agreement. Enforcing the terms of an existing contract is a far different consideration from establishing, as here, the terms which may be demanded for inclusion in such an agreement under penalty of law.

[27] An illustrative, but by no means exhaustive picture of the extent to which this Board and the courts have gone in recognizing and protecting a union's right to strike and to engage in other forms of concerted activity to force an agreement on mandatory issues of bargaining may be gained from the following: *N.L.R.B.* v. *Mackay Radio & Telegraph Company,* 304 U. S. 333; *Auto Workers* v. *O'Brien,* 339 U. S. 454; *N.L.R.B.* v. *United States Cold Storage Corp.,* 203 F.2d 924 (C.A. 5); *N.L.R.B.* v. *Industrial Cotton Mills,* 208 F.2d 87 (C.A. 4); *Collins Baking Company* v. *N.L.R.B.,* 193 F.2d 483 (C.A. 5).

Indeed, even when bargaining has been carried forward to an impasse, this Board and the courts have further protected the right to strike by holding that, in such event, the strike itself breaks the impasse and thus requires further bargaining about the same subject matter. See *Boeing Airplane Co.,* 80 NLRB 447; *N.L.R.B.* v. *Reed & Prince Manufacturing Company,* 118 F.2d 874 (C.A. 1); *Texas Gas Corporation,* 136 NLRB No. 38.

legally available to a union to compel a complete abandonment by management of its proposal on pain of suffering irreparable damage to every aspect of its business. That such a power, in pursuit of mandatory bargaining objectives, is effectively employed by many modern unions is manifest in countless cases which come to public attention and to the attention of this tribunal day by day.[28]

Unlike my colleagues, I can find no authority for such a ruling as this in the statute which guides our labors. Reliance on *Telegraphers* v. *Chicago & N. W. R. Co.*, 362 U. S. 330 which turned on the construction of the Railway Labor Act and the Interstate Commerce Act, is, I believe, completely misplaced. By the statutes there involved, Congress sought to, and did, place certain monopolistic industries in a status of being "impressed with a public interest." [29] No such concepts

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[28] As I stated in my dissenting opinion in *Town & Country*, *supra*, "[w]hether to continue or terminate an operation is a prerogative of management not subject to collective bargaining. To hold, therefore, that an employer can be forced to bargain over the effect of a decision to terminate necessarily renders that prerogative meaningless. For, obviously, to require an employer to bargain over this aspect of his decision does not leave him free to make the decision; in such a situation he is left, for all practical purposes, in no better position than he would have been in had he been required to negotiate with the union the whole subject of termination."

Moreover, it is to be noted in this case that the so-called termination rights and termination benefits of the affected employees were fully covered by an existing collective bargaining agreement of the parties and were not therefore subject to further mandatory bargaining. It is also worthy of note that the employer herein assured the union of its intention to abide by the terms of that agreement.

[29] "Indicative of the broad and permeating degree of governmental regulations and control which Congress imposed upon the railroad industry in the public interest by the Interstate Commerce Act and the Railway Labor Act, are the following excerpts from the Supreme Court's opinion in the *Telegrapher's* case: "In pertinent part it [the Interstate Commerce Act] provides: 'It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation, subject to the provisions of this Act . . . to promote safe, adequate, economical and efficient service and foster sound economic conditions in transportation and among the several carriers . . .' "; "Congress has long made the maintenance and development of an economical and efficient railroad system a matter of primary national concern. Its legislation must be read with this purpose in mind"; "For the fair and firm effectuation of these policies, Congress has provided that issues respecting the propriety of [abandonment, combinations, and consolidations] all railroads be determined by a public regulatory body, the Interstate Commerce Commission"; "Congress, in the Interstate Commerce Act, has expressly required that before approving such . . . the Interstate Commerce Commission 'shall require a fair

were embodied in, or even seriously suggested for embodiment in, either the Wagner Act or the Taft-Hartley Act. Nor, in my opinion, does this Board have the power, as a matter of policy, to place such a "public interest" imprimatur on every business enterprise in the United States, without the prior approval of Congress and the courts.[30]

Nor do I agree that the Supreme Court's decision in *Steelworkers* v. *Warrior & Gulf Co.*, 365 U. S. 574, aids the majority's cause. The Court in that case was concerned with whether by an arbitration clause in an existing contract the Company had agreed to arbitrate the subject of contracting out. It is one thing to say that an Employer may be compelled to arbitrate where he had so bound himself by agreement; however, it is an entirely different thing to hold that he can be compelled to negotiate on that subject for inclusion in the agreement. Likewise I cannot read into the Supreme Court's passing reference in *Teamsters Union* v. *Oliver*, 358 U. S. 283, to the *Timken Roller Bearing* case any conclusion that the Court was thereby adopting the view that subcontracting was a mandatory subject of bargaining.

If this ruling of the majority stands, it is difficult to foresee any economic action which management will be free to take of its own volition and in its own vital interest (whether it be the discontinuance of an unprofitable line, the closing of an unnecessary facility, or the abandonment of an outmoded procedure) which would not be the subject of *mandatory* bargaining.

In the final analysis, the subjecting of such management decisions as this to the ambit of the Board's processes, and particularly to the mandatory bargaining requirements, simply

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and equitable arrangement to protect the interest of the railroad employees affected' "; "The Interstate Commerce Commission has power to include conditions for the protection of displaced persons in deciding what the public convenience and necessity may require."

[30] Moreover, it has been judicially recognized that managerial decisions such as that in issue here are not mandatory subjects of bargaining under our Act. See *Jays Foods, Inc.* v. *N.L.R.B.*, 292 F.2d 317 (C.A. 7); *N.L.R.B.* v. *Rapid Bindery, Inc.*, 293 F.2d 170, 176 (C.A. 2). See also *N.L.R.B.* v. *New Madrid Manufacturing Company*, 215 F.2d 908, 914 (C.A. 8); *N.L.R.B.* v. *Lassing*, 284 F.2d 781, 783 (C.A. 6); *N.L.R.B.* v. *Houston Chronicle Pub. Co.*, 211 F.2d 848, 851 (C.A. 5); *N.L.R.B.* v. *R. C. Mahon Co.*, 269 F.2d 44, 47 (C.A. 6); *N.L.R.B.* v. *Adkins Transfer Co.* 226 F.2d 324, 327-328 (C.A. 6); and cases annotated at 152 A.L.R. 149.

means that short of complete union agreement, any action taken by management must hereafter be taken at its peril.[31]

The time involved in extensive negotiations and in protracted litigation before the Board, together with the numerous technical vagaries, practical uncertainties, and changing concepts which abound in the area of so-called "good faith bargaining," make it impossible for management to know when, if, or ever, any action on its part would be clearly permissible. These factors, together with the crushing, burdensome remedy, which this Agency will retroactively impose upon a given enterprise, should the National Labor Relations Board determine that the action of management was (for whatever reason) improperly taken, will serve effectively to retard and stifle sound and necessary management decisions. Such a result, in my opinion, is compatible neither with the law, nor with sound business practice, nor with a so-called free and competitive economy.

Accordingly, I would dismiss the complaint.

Dated, Washington, D. C.

PHILIP RAY RODGERS, Member
National Labor Relations Board

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[31] The following cases demonstrate that management acts at its peril in a bargaining context notwithstanding the existence of an impass, a strike, or the absence of bad faith in the circumstances: *Boeing Airplane Co., supra*, holding it is incumbent upon the respondent to explore the changed situation arising from strike action by resuming negotiations with the union. Failure to do so resulted in the finding of bad faith bargaining. To the same effect, see *N.L.R.B.* v. *United States Cold Storage Corp.*, 203 F.2d 924 (C.A. 5). *Tom Thumb Stores, Inc.*, 123 NLRB 833, 835, (holding that employer relies on contention of inappropriate unit at his peril); *Cone Brothers* v. *N.L.R.B.*, 235 F.2d 37, 41 (C.A. 5) (unlawful refusal to bargain despite employer's genuine belief that election and certification were invalid); *Art Metals Construction Company*, 110 F.2d 148, 150 (C.A. 2) (in finding refusal to bargain, Court stated employer questions majority status at his peril).

APPENDIX

Notice to All Employees

PURSUANT TO
A SUPPLEMENTAL DECISION AND ORDER

of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT refuse to bargain collectively with EAST BAY UNION OF MACHINISTS, LOCAL 1304, UNITED STEELWORKERS OF AMERICA, AFL-CIO and UNITED STEELWORKERS OF AMERICA, AFL-CIO as the exclusive representative of our maintenance and powerhouse employees in the appropriate unit.

WE WILL NOT unilaterally subcontract unit work or otherwise unilaterally make changes in the wages, hours, and other terms and conditions of employment for the employees in the appropriate unit without prior bargaining with EAST BAY UNION OF MACHINISTS, LOCAL 1304, UNITED STEELWORKERS OF AMERICA, AFL-CIO, UNITED STEELWORKERS OF AMERICA, AFL-CIO, or any other union which they may select as their exclusive bargaining representative.

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist EAST BAY UNION OF MACHINISTS, LOCAL 1304, UNITED STEELWORKERS OF AMERICA, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL reinstitute our maintenance operations previously performed by our employees represented by

EAST BAY UNION OF MACHINISTS, LOCAL 1304 of UNITED STEELWORKERS OF AMERICA, AFL-CIO.

WE WILL bargain collectively with EAST BAY UNION OF MACHINISTS, LOCAL 1304, UNITED STEELWORKERS OF AMERICA, AFL-CIO, and UNITED STEELWORKERS OF AMERICA, AFL-CIO, as the exclusive bargaining representative of our employees in the appropriate maintenance and powerhouse unit with respect to wages, hours, and other terms and conditions of employment.

WE WILL offer to those employees discharged as a result of the subcontracting of the maintenance operations immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay suffered by them as a result of our bypassing the above-named exclusive bargaining representative and unilaterally subcontracting our maintenance operation.

FIBREBOARD PAPER PRODUCTS CORPORATION
(Employer)

Dated ..... By .....
(Representative) (Title)

NOTE: We will notify any of the above employees presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in in accordance with the Selective Service Act after discharge from the Armed Forces.

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 830 Market Street, Room 703, San Francisco 2, California (Tel. No. YUkon 6-3500 Ext. 3191), if they have any questions concerning this Notice or compliance with its provisions.

UNITED STATES OF AMERICA

Before the National Labor Relations Board

[Caption Omitted]

DECISION AND ORDER

On November 27, 1959, Trial Examiner Howard Myers issued his Intermediate Report in the above-entitled proceeding finding that the allegations of the complaint were not supported by substantial evidence and recommending that the complaint be dismissed in its entirety as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent, the Union, and the General Counsel filed exceptions to the Intermediate Report and briefs in support thereof.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the parties' exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following modifications and additions.

The record in this case shows that Respondent had bargained with United Steelworkers of America, AFL-CIO, the charging party in this case, for a unit of some 50 maintenance and powerhouse employees under a series of collective bargaining contracts since 1937. The last of these contracts expired on July 31, 1959. Between 1954 and 1956 the Respondent had under consideration the feasibility of contracting out its maintenance work as a measure of effecting plant economies. The study was renewed in June, 1959. As a result of the renewed study, Respondent reached the decision on July 27, 1959 to effectuate this plan, which, it was estimated, would save the Respondent $225,000 annually in addition to a substantial reduction in manpower. Automatic renewal of the existing contract with the Steelworkers had been forestalled by the Union's letter of May 26, requesting substantial modifications in the existing contract. As soon as Respondent had made its decision on subcontracting, R. C. Thumann, its director of industrial relations, contacted W. F. Stumpf, the international representative of the Steelworkers, and informed him that negotiations for a new contract covering the maintenance em-

ployees would be pointless as the change in Respondent's method of operations would become effective on July 31, upon expiration of the existing contract. It is undisputed that the Union had not previously been informed of the Respondent's intention with regard to contracting out the maintenance work. According to the testimony of Thumann, which was credited by the Trial Examiner, on July 27 and again on July 30, Respondent informed the Steelworkers' representatives that Respondent was prepared to give termination pay to the terminated employees as well as additional allowances and benefits. No objections to these proposals were raised by the Steelworkers.[1]

The Trial Examiner found that the Respondent's motive in contracting out its maintenance work was economic rather than discriminatory. Accordingly, he concluded that the maintenance employees were validly terminated when the Respondent, in the exercise of its business judgment, decided to contract out the work theretofore performed by the Respondent with its own employees. We agree with the Trial Examiner that the evidence fails to support the allegation of the complaint that the Respondent's decision was motivated by discriminatory reasons.

In his exceptions to the Intermediate Report, however, the General Counsel contends that the Trial Examiner did not pass upon an issue of primary importance in this case. It is the position of the General Counsel that the Respondent was under a statutory duty to bargain with the Steelworkers about its *decision* to contract out the maintenance work. The General Counsel relies upon language from the *Shamrock Dairy* case, 124 NLRB 494, 498, that the duty to bargain ". . . includes the obligation to notify the collective bargaining representatives and to give such representative a chance to negotiate with respect to a contemplated change concerning the tenure of the employees and their conditions of employ-

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[1] Since the Respondent was willing to discuss the termination benefits to which the affected employees were entitled, such as termination pay and pro-rata vacation pay, this case is to be distinguished from *Brown-Dunkin, Inc.*, 125 NLRB No. 128, and *Brown Truck and Trailer Manufacturing Company, Inc.*, 106 NLRB 999, in which the 8(a)(5) violations were predicated upon a refusal to bargain about certain incidents of termination.

ment. . . ." Considered, however, in the context[2] of the supporting citation of the *Brown Truck* case, *supra*, this language does not support the broad proposition, urged upon us by the General Counsel, that a management decision to cease one phase of its operations solely for economic reasons is in and of itself a mandatory subject of bargaining. Indeed, not only is this broad proposition without supporting precedent, but it is in fact contrary to existing precedent. For, as the Board has held, the establishment by the Board of an appropriate bargaining unit does not preclude an employer acting in good faith from making changes in his business structure, such as entering into subcontracting arrangements, without first consulting the representative of the affected employees.[3]

Moreover, considering the question *de novo*, we conclude that the General Counsel's position is not supported by the statutory language or purpose. The statutory obligation imposed upon employers by Section 8(a)(5) is unquestionably broad, and includes the obligation to bargain not only concerning matters affecting employees while they are employed, but also, concerning matters as they affect termination and post-termination rights and obligations. None of the obligations heretofore imposed with respect to this latter category concern, however, the question whether, as here, a termination will occur; all, rather presuppose that terminations will occur, and are concerned solely with such matters as selection for termination among present employees, and benefits flowing from present employment which employees may be entitled to receive at the time of or following the termination of employment. These matters, therefore, although they look to the future, nevertheless involve matters presently affecting employees within an existing bargaining unit; for that reason they fall within the statutory language as "conditions of employment."[4]

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[2] See *Armour & Co.* v. *Wantock*, 323 U. S. 126, 133, where the Court cautioned that "words of our opinions are to be read in the light of the facts of the case under discussion. . . . General expressions transposed to other facts are often misleading."

[3] *Mahoning Mining Company*, 61 NLRB 792, 803; See also, *Walter Holm & Company*, 87 NLRB 1169, 1172.

[4] Member Rodgers concurs in the dismissal of the complaint herein. However, he does not subscribe to that portion of the opinion which asserts that the Respondent was under an obligation to bargain with the Union about the so-called termination rights and termination benefits of the affected employees. These matters were fully covered by the

The obligation which the General Counsel would impose is, however, of an entirely different nature. For it is not concerned with the conditions of employment of employees within an existing bargaining unit; it involves, rather, the question whether the employment relationship shall exist. Although the determination of that question obviously affects employees, that determination does not relate to a condition of employment, but to a precondition necessary to the establishment and continuance of the relationship from which conditions of employment arise. Moreover, although the statutory language is broad, we do not believe it is so broad and all inclusive as to warrant an inference that the Congress intended to compel bargaining concerning basic management decisions, such as whether and to what extent to risk capital and managerial effort. Under all the circumstances, therefore, we conclude that Section 8(a)(5) of the Act does not obligate the Respondent to bargain with the Steelworkers concerning its economically motivated decision to sub-contract its maintenance operations.

We do not agree with our dissenting colleague that the *Timken*, *Shamrock*, and *Railroad Telegraphers* cases[5] compel a contrary conclusion. In each of those cases, the union continued and would continue to be the representative of employees in the pre-existing unit, and the decisions which the employers might make, in *Timken* and *Shamrock* with respect to subcontracting and in *Railroad Telegraphers* with respect to abolition of positions, had or might have an impact on the conditions of employment of employees remaining in the unit. For that reason the employees' representative was entitled to bargain with respect to such decisions. Here, however, as set forth above, no employees remained in the unit to be represented by the Union, and thus there necessarily could be no impact on the employment conditions of employees remaining in the unit. Those cases, therefore, do not support the proposition which our colleague urges—that a union which will not represent any of the employer's employees is entitled

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existing collective bargaining agreement of the parties and were not therefore subject to further mandatory bargaining. Accordingly, he finds it unnecessary to pass upon the applicability of the *Timken*, *Shamrock*, and *Railroad Telegraphers* cases to the facts of this case.

[5] *The Timken Roller Bearing Company*, 70 NLRB 500; *Shamrock Dairy, Inc.*, 124 NLRB 494; *The Order of Railroad Telegraphers, et al.* v. *Chicago and North Western Railroad Co.*, 362 U. S. 330.

to compel the employer to bargain about matters which will have an impact only when it ceases to be a representative.[6]

We also agree with the Trial Examiner for the reasons stated in the Intermediate Report that the Respondent did not violate Section 8(d) of the Act by failing to abide by the notice provisions of that Section when it decided to contract out the maintenance work upon expiration of the existing contract.

ORDER

IT IS HEREBY ORDERED that the complaint herein be and it hereby is, dismissed.

Dated, Washington, D. C., March 27, 1961

PHILIP RAY RODGERS,
Member

BOYD LEEDOM,
Member

JOSEPH ALTON JENKINS,
Member

(SEAL)

National Labor Relations Board

JOHN H. FANNING, MEMBER, dissenting in part and concurring in part:

The basic facts in this case are substantially undisputed. The Respondent, after being notified of the Union's contract demands, revived its dormant plan to subcontract out the plant maintenance work, ostensibly as an economy measure. The Respondent notified the Union of this for the first time on July 27, 1959, 4 days before the expiration of the contract on July 31, 1959. The subcontracting arrangement was to take effect at the expiration of the contract. The Union protested this change, but the Respondent refused to discuss its decision and unilaterally put the subcontracting operation into effect, discharging the union-member employees previously doing the maintenance work. Even accepting, as I do, that the decision was made for a valid economic reason, I conclude, contrary to my colleagues, that the conduct of the Employer in this case violates a basic requirement of the Act. Simply stated,

[6] Insofar as language in the above cases, taken out of context, may seem to lend support to the position of our dissenting colleague, see footnote 2, *supra*.

the issue here is whether an employer, absent any discriminatory motivation, violates Section 8(a)(5) of the Act when he refuses to discuss with the union his decision to subcontract the work previously done by union-member employees and unilaterally subcontracts that work.

Section 8(d) requires an employer to bargain in good faith ". . . with respect to wages, hours, and other terms and conditions of employment, for the negotiating of an agreement, or any question arising thereunder, . . ." If subcontracting is such a subject, then the Respondent in this case violated the Act, even if the decision to subcontract was otherwise lawfully motivated.

In the *Timken Roller Bearing* case[7] the Employer refused to bargain about his intention to subcontract work in the future. The Board, in agreement with the findings and reasoning of the Trial Examiner, decided that this conduct constituted a refusal to bargain. In so doing the Board specifically adopted the Trial Examiner's conclusion that ". . . the Respondent's system of subcontracting work may vitally affect its employees by progressively undermining their tenure of employment in removing or withdrawing more and more work and hence more and more jobs from the unit."[8] This reasoning applies with considerably more vigor where, as in the instant case, the entire complement of workers were rendered jobless in a single transaction. The *Timken* case is indistinguishable from the instant case on the subcontracting issue.

More recent Board cases may be cited to the same effect. Thus in the *Shamrock Dairy* case,[9] the Employer, without notice to the Union, executed individual employment contracts with its employee-drivers for the purpose of establishing an independent contractor system of distributing its products. A Board majority held that such unilateral adoption of the new system of distribution constituted a violation of Section 8(a)(5) and (1) of the Act.

> "Members Jenkins and Fanning agree with the Chairman for the reasons stated hereinafter that the Respondent violated Section 8(a)(5) and (1) by failing to bargain

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[7] The *Timken Roller Bearing Company*, 70 NLRB 500, enforcement denied on other grounds, 161 F.2d 947.

[8] The *Timken Roller Bearing Company, supra*, at 518.

[9] *Shamrock Dairy, Inc.*, 124 NLRB 494.

with the Union as to whether the so-called independent contractor system of distribution should be adopted." [10]

While the Remedy section of that case is less clear, the Order of the Board was unambiguous in that it ordered the employer to bargain about the adoption of the independent contractor system of distribution.

A careful reading of the *Shamrock* case reveals that the portion of that case cited by the majority in the instant case is not the holding, but merely one of the *reasons* for the holding, as the above quotation from the *Shamrock* case indicates.

Whatever the effect of the foregoing decisions, it is clear that the opinion of the Supreme Court of the United States in the *Railroad Telegraphers* case[11] controls the disposition of the instant case. That case dealt with the right of the Union to demand bargaining on its proposed contract provision that "No position in existence on December 3, 1957, will be abolished or discontinued except by agreement between the carrier and the organization." [12] The Railroad sought an injunction to prevent any strike by the Union in support of that demand. The Railroad argued that this was not a "labor dispute" within the meaning of the Norris-LaGuardia Act and, accordingly, that the anticipated strike was enjoinable. The Railroad further contended that, regardless of the Norris-LaGuardia Act, the strike was unlawful and hence enjoinable.

In that portion of the decision which applies directly to the instant case the Supreme Court held that the Union's proposal was not unlawful: "Here, far from violating the Railway Labor Act, the Union's effort to negotiate its controversy with the railroad was in obedience to the [Railway Labor] Act's command that employees as well as railroads exert every reasonable effort to settle all disputes concerning 'rates of pay, rules, and working conditions' 45 U.S.C. 82, 1st".[13]

Section 2, First of the Railway Labor Act is substantially identical in its pertinent provisions to Section 8(d) of the National Labor Relations Act, *supra*, and, like Section 8(d), it imposes the affirmative duty to bargain.[14]

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[10] *Shamrock Dairy, Inc., supra,* at 497, 498.

[11] *Telegraphers* v. *Chicago and N.W.R. Co.,* 362 U.S. 330.

[12] *Telegraphers* v. *Chicago and N.W.R. Co., supra* at 332.

[13] *Telegraphers* v. *Chicago and N.W.R. Co., supra* at 339.

[14] *Virginia Railway Co.,* v. *System Federation No. 40,* 300 U. S. 515.

Since the scope of the duty to bargain is substantially the same under both the NLRA and RLA,[15] the *Railroad Telegraphers* case is directly applicable to the instant case. Since the Union's demand to bargain about job abolition or discontinuance was a proper subject of bargaining under the RLA, it necessarily follows that the Union's demand to bargain about the abolition of jobs under a proposed subcontracting arrangement in the instant case is also a proper subject of bargaining.

My position in the instant case is simply a restatement of what is already the law by virtue of the Supreme Court's decision in the *Railway Telegraphers* case.[16] In this connection, it may be noted that an attempt was made in the 2nd Session of the 86th Congress to reverse this interpretation of the existing law.[17] This attempt having failed in Congress, I do not believe it should succeed in this agency.

To hold, as the majority does in the instant case, that the Employer is not obliged to bargain about its decision to subcontract, is contrary not only to the Act and the Board's own precedents but the clear pronouncement of the Supreme Court of the United States.[18] As a result of the majority's decision,

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[15] Indeed the term "other terms and conditions of employment" in the NLRA has been held to be more inclusive than the term "working conditions" in the RLA. *Inland Steel Company* v. *N.L.R.B.*, 170 F.2d 247, cert. den. 336 U. S. 960.

[16] Although the *Railroad Telegraphers* case in the Supreme Court opinion upon which I primarily rely in resolving the instant case, the Supreme Court has had occasion in the past to shed some light on its thinking with respect to mandatory subjects of bargaining when it cited, with approval, *Timken Roller Bearing Co., supra*, in the following context.

> "It is not necessary to set precise outside limits to the subject matter properly included within the scope of mandatory collective bargaining. Cf. *Labor Board* v. *Borg-Warner Corp.*, 356 U. S. 342, to hold, as we do, that the obligation under Section 8(d) on the carrier and their employees to bargain collectively with respect to wages, hours, and other terms and conditions of employment and to embody their understanding in a written contract incorporated in any agreement reached, found an expression in the subject matter of Article XXXII [wages]. See *Timken Roller Bearing Co.*, 70 NLRB 500, 518 reversed on other grounds, 161 F.2d 947. And certainly bargaining on this subject through their representatives was a right of the employees protected by §7 of the Act." *Teamsters Union* v. *Oliver*, 358 U. S. 283, 294, 5.

[17] S. 3548, 86th Cong., 2nd Sess.

[18] With respect to the majority's contention that my reliance on existing precedent is "taken out of context," such a contention is hardly an answer to specific holdings of Board and court decisions. The cases cited, of course, are available for the consideration of any interested persons.

employers by the simple expedient of unilaterally subcontracting work may abolish every job in a collective bargaining unit and thereby eliminate union representation.

In my opinion, Section 8(d) under existing Board and Supreme Court decisions imposes on an employer the duty to bargain about its decision to subcontract work performed by employees represented in a collective bargaining unit.[19] Clearly, this duty to bargain is not an order restraining the employer from subcontracting such work. The duty to bargain does not include an obligation to yield. Had the employer bargained about its decision to subcontract the maintenance work in the instant case, it is entirely possible that the parties could have arrived at a solution to the problem short of subcontracting the entire maintenance operation. It seems to me that this possibility is the goal of sound collective bargaining, which the Act is designed to foster and encourage.

I agree with the majority that the Respondent did not violate Section 8(d) with respect to the notice provisions of that Section.

Dated, Washington, D. C., March 27, 1961

JOHN H. FANNING, Member
National Labor Relations Board

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[19] The majority asserts that the *Timken*, *Shamrock*, and *Railroad Telegraphers* cases are not inconsistent with their decision here. They would distinguish the instant case from the cited cases on the ground that *after the unfair labor practice occurred* "no employees remained in the unit to be represented by the Union." Presumably, the majority would find a violation of Section 8(a)(5) if the Respondent had subcontracted half of its maintenance work without bargaining. This is to say that discharging some employees in a unit without bargaining is unlawful, but discharging all of them is not. The inconsistency of this approach is apparent, and promises a sound basis for future confusion in an already difficult area of the law.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Division of Trial Examiners
Branch Office
San Francisco, California

FIBREBOARD PAPER PRODUCTS CORPORATION[1]
and
EAST BAY UNION OF MACHINISTS, LOCAL 1304, UNITED STEELWORKERS OF AMERICA, AFL-CIO
and
UNITED STEELWORKERS OF AMERICA, AFL-CIO

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Statement of the Case

Upon a joint charge duly filed on July 31, 1959, by East Bay Union of Machinists, Local 1304, United Steelworkers of America, AFL-CIO, and United Steelworkers of America, AFL-CIO, herein conjointly called the Steelworkers, the General Counsel of the National Labor Relations Board, herein respectively called the General Counsel[2] and the Board, through the Regional Director for the Twentieth Region (San Francisco, California), issued a complaint, dated September 2, 1959, alleging that Fibreboard Paper Products Corporation, herein called Respondent, had, and was, engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1)(3) and (5) and Section 2(5) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act.

Copies of the charge and complaint, together with notice of hearing thereon, were duly served upon Respondent and upon the Steelworkers.

Specifically, the complaint, as amended at the hearing, alleged that, in violation of Section 8(a)(1), (3) and (5) of the Act, Respondent on about July 27, 1959, entered into an oral understanding, to take effect on August 1, 1959, with

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[1] Erroneously referred to in the formal papers as Fibreboard Paper Products Corp.

[2] This term specifically includes counsel for the General Counsel appearing at the hearing.

Fluor Maintenance, Incorporated, herein called Fluor, whereby Fluor, acting as an independent contractor, was to perform all Respondent's Emeryville plant maintenance work, including all work previously performed by Respondent's employees who were then represented, for the purpose of collective bargaining, by the Steelworkers; (2) on or about July 30, 1959, notified the Steelworkers that the then current collective bargaining contract between it and the Steelworkers would terminate the following day because Respondent would no longer have any employees in the unit covered by said contract; (3) refused to bargain with the Steelworkers regarding termination pay; and (4) on July 30, 1959, terminated all employees in the unit covered by said contract in accordance with its aforementioned understanding with Fluor. The complaint, as amended, further alleged that Respondent failed to fulfill its statutory duty to bargain collectively with the Steelworkers within the meaning of Section 8(d) of the Act.

On September 10, 1959, Respondent duly filed an answer, which was amended at the hearing, denying the commission of the unfair labor practices alleged.

Pursuant to due notice, a hearing was held on September 21 and 22, 1959, at San Francisco, California, before the undersigned, the duly designated Trial Examiner. All parties were represented by counsel who participated in the hearing. Full opportunity was afforded counsel to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally on the record at the conclusion of the taking of the evidence, and to file briefs on or before October 27, 1959.[3] Briefs have been received from Respondent's counsel and from counsel for the Steelworkers which have been carefully considered. After the close of the hearing, counsel for the Steelworkers and Respondent's counsel entered into a written stipulation to correct certain errors appearing in the stenographic transcript of the hearing. The stipulation is hereby approved, and the corrections are hereby deemed made. The stipulation is received in evidence as Trial Examiner's Exhibit 1.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

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[3] At the request of counsel for the Steelworkers the time to file briefs was extended to November 9, 1959.

I. Findings of Fact

Respondent, a Delaware corporation, operating 20 plants in the States of California, Oregon, Nevada, and Colorado, is engaged in the manufacture, sale, and distribution of paint, industrial insulation, roofing materials, floor covering materials, and related products. During the 12-month period immediately preceding the issuance of the complaint herein, Respondent sold and shipped from its Emeryville, California, plant, the employees of which are the only ones involved in this proceeding, to customers located outside of the State of California, finished products valued in excess of $1,000,000. During the same period, the Emeryville plant's out-of-state purchases of raw materials exceeded $1,000,000.

Upon the above admitted facts, the undersigned finds that Respondent at all times material herein was, and now is, engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the policies of the Act for the Board to assert jurisdiction over this proceeding.

II. The labor organizations involved

East Bay Union of Machinists, Local 1304, United Steelworkers of America, AFL-CIO, and United Steelworkers of America, AFL-CIO, are labor organizations admitting to membership employees of Respondent.

III. The alleged unfair labor practices

A. The pertinent facts

For more than a score of years the Respondent and/or its predecessors have had collective bargaining contracts with the Steelworkers and/or its predecessors.

The contract in issue in this proceeding, dated September 24, 1958, effective as of August 1, 1958, expired by its terms, on July 31, 1959,[4] covered all Respondent's maintenance employees.[5]

The pertinent provisions of said contract reads as follows:

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[4] Unless otherwise indicated, all dates hereinafter mentioned refer to 1959.

[5] These 50 or so employees are described in the record as "maintenance, mechanics and machinists, their helpers, working foremen, and firemen and engineers employed in the powerhouse, and the storekeeper in the central supply and store room."

This Agreement shall continue in full force and effect to and including July 31, 1959, and shall be considered renewed from year to year thereafter between the respective parties unless either party hereto shall give written notice to the other of its desire to change, modify, or cancel the same at least sixty (60) days prior to expiration.

Within fifteen (15) days after notice of reopening is given, the opening party shall submit a complete and full list of all proposed modifications. All other sections shall remain in full force and effect. Negotiations shall commence no later than forty-five (45) days prior to the anniversary date of the Agreement unless otherwise mutually changed.

Under date of May 26, the Steelworkers wrote Respondent as follows:

Pursuant to the provisions of the Labor Management Relations Act, 1947, you are hereby notified that the Union desires to modify as of August 1, 1959 the collective bargaining contract dated July 31, 1958, now in effect between the Company and the Union.

The Union offers to meet with the Company at such early time and suitable place as may be mutually convenient, for the purpose of negotiating a new contract.

Under date of June 2, R. C. Thumann, for the past 10 years Respondent's director of industrial relations and as such, was Respondent's chief negotiator with the unions representing its employees, replied to the aforesaid letter in the following manner:

This will acknowledge your letter of May 26, 1959, requesting a meeting to discuss modifications of the current Agreement between the Emeryville Plant of Fibreboard Paper Products Corporation and the United Steelworkers of America on behalf of the East Bay Union of Machinists, Local 1304.

We will contact you at a later date regarding a meeting for this purpose.

Under date of June 15, the Steelworkers wrote Respondent requesting a meeting to discuss the proposals enclosed in said letter. The proposals read as follows:

Wage Scales

SECTION I—We would like to arrive at a basis to eliminate the unfair wage discrepancy between the machinist and the other crafts in the plant.

Seniority

SECTION IV—Paragraph b—Change ninety (90) days to thirty (30) days.

Hours of Work and Overtime

SECTION V—We request a 35 hour week—schedule of shifts to be worked out.

Holidays

SECTION XII—1. Add, one additional paid Holiday. 2. Delete worked the day before and the day after, for qualifying.

Night Differentials

SECTION XIII—(a) Change to ten (10) percent, and fifteen (15) percent.

Vacations

SECTION XV—We request three weeks vacation after five years of service, and four weeks vacation after fifteen years of service.

Welfare Plan

SECTION XVII—The plant to pay full cost of Health and Welfare. The Plant also to extend the coverage to retired employees under the pension plan.

Adjustment of Complaints

SECTION XXI—Add new section between (a) and (b) as follows:

Such meeting between an executive of the Plant and a representative of the Machinist Union no later than five working days after referral to the above representatives

of the parties. Failure of either party to be available shall constitute concession of the grievance to the other party. The time limit may be extended by mutual agreement.

New

We request five cents per hour to be placed into a fund to provide for supplementary unemployment benefits for employees laid off in a reduction in force. To provide at least sixty-five percent of the employees normal weekly wage, including unemployment benefits.

Qualifications to be those of the State Department of Employment.

On June 26, Lloyd Ferber, for more than seven years the business representative of Local 1304, telephoned Thumann and during the conversation requested a bargaining meeting and Thumann replied that he would telephone him during the week of July 12, to arrange such a meeting.

During the week of July 12, Ferber again telephoned Thumann but did not speak to him because Thumann was not in his office. Ferber left word with Thumann's secretary to have Thumann call him. Thumann did not return the call but instead had his secretary telephone Ferber and tell Ferber that he would endeavor to call Ferber before the end of that week to fix a time for a meeting.

On the morning of July 27, Thumann was informed that Respondent had decided to "contract out" the work which then was being performed by the men covered by the Steelworkers' contract. He immediately telephoned William F. Stumpf, a representative of the Steelworkers (the International) and stated that he desired to meet with him and Ferber as soon as possible. Because of other union business Stumpf and Ferber could not meet with Thumann until late that afternoon.

Stumpf, Ferber and Thumann met at about 5:30 that afternoon, July 27. The discussion was opened by Ferber remarking that Thumann would receive, in the forepart of the week, a communication from the Central Labor Council informing him that Ferber had "asked for strike sanction against the plant." Thereupon, Thumann handed to Ferber and to Stumpf copies of letters, dated July 27, reading as follows:

Mr. Wm. F. Stumpf, Representative
UNITED STEELWORKERS OF AMERICA
610 Sixteenth Street—Rooms 219-220
Oakland 12, California

SUBJECT: EMERYVILLE PLANT AGREEMENT

Under date of May 26, 1959, Mr. Stumpf, you notified us of your desire to modify our collective bargaining agreement with your Union dated September 24, 1958, relative to maintenance employees at our Emeryville plant, and of your desire to meet for the purpose of negotiating a new contract to be effective August 1, 1959. Under date of June 15, 1959, you forwarded your contract proposals.

For some time we have been seriously considering the question of letting out our Emeryville maintenance work to an independent contractor, and have now reached a definite decision to do so effective August 1, 1959.

In these circumstances, we are sure you will realize that negotiation of a new contract would be pointless. However, if you have any questions, we will be glad to discuss them with you.

/s/ R. C. Thumann
Director of Industrial Relations[6]

After Stumpf and Ferber had read the letters, considerable discussion then ensued regarding Respondent's legal right to enter into a contract with a third party to do the work which had been done by members of Local 1304. When mention was made that a picket line would be established at the plant if Respondent entered into such a contract, Thumann stated that it would be directed against the contractor in order to force him to hire Local 1304 members. Thumann also stated that Respondent not only would give each person laid off, because of the termination of his employment with Respondent, all the termination pay and other monetary and similar benefits due under the collective bargaining agreement, but would also, even though the agreement did not so provide, grant them vacation pay on a pro rata basis. When Thumann was asked the name of the contractor who was to do the main-

[6] The letter handed to Ferber was addressed to Ferber and his name appears in the first paragraph thereof. The May 26 letter mentioned in the above quoted letter was signed by both Ferber and Stumpf.

tenance work, he replied that Respondent had under consideration two contractors and that as soon as Respondent decided between them he would immediately advise Ferber. The meeting concluded with the understanding that the parties would meet again the following Thursday, July 30.

The next day, July 28, Thumann telephoned Ferber and said that the contract had been let to Fluor. After some further conversation relative to the establishment of a picket line, Thumann agreed to meet with Ferber and the Steelworkers' negotiating committee on Thursday afternoon, July 30.

The following letter, dated July 29, was received by Respondent on July 30:

> Fibreboard Paper Products Corporation
> P. O. Box 4317
> Oakland, California
> Attention: Mr. R. C. Thumann,
> Director of Industrial Relations
>
> Gentlemen: Re: Subject: Emeryville Plant Agreement
>
> Reference is made to your letter of July 27, 1959.
>
> We interpret your letter to mean that you are attempting to cancel your present agreement with us. If that is your intention, you are too late. We direct you to the provision of the agreement which requires that you should have given us at least sixty (60) days notice of cancellation prior to the July 31, 1959 expiration date.
>
> In the absence of such notice, the contract has been automatically renewed for another year, subject, of course, to your obligation to meet with us at once to discuss the proposed modifications which we sent you, following our notice of May 26 for modifications of the existing agreement.
>
> We trust that you will not lock out the employees covered by our agreement, and that you will not consummate the plan outlined in your letter of July 27th. We call upon you to meet with us at once.
>
> Very truly yours,
> UNITED STEELWORKERS OF AMERICA
> AFL-CIO
> By Wm. F. Stumpf, Representative
> By Lloyd Ferber, Business Rep.
> Local 1304

On the afternoon of July 30, Thumann and four other Respondent officials met with Stumpf, Ferber, the employees' negotiating committees, and others. At the opening of the meeting, Thumann handed copies of the following letter signed by Thumann and dated July 30, to both Stumpf and Ferber:

> Messrs. Wm. F. Stumpf, Representative, and
> Lloyd H. Ferber, Business Representative, Local 1304
> UNITED STEELWORKERS OF AMERICA
> 610 Sixteenth Street—Room 219-220
> Oakland 12, California
>
> Gentlemen, the following is in reply to your letter of July 29, 1959.
>
> 1. The introductory provisions of our Agreement with your Union provide in pertinent part:
>
> > "This Agreement shall continue in full force and effect to and including July 31, 1959, and shall be considered renewed from year to year thereafter between the respective parties unless either party hereto shall give written notice to the other of its desire to change, modify or cancel the same at least sixty (60) days prior to expiration."
>
> Under date of May 26, 1959, you notified us of your desire to modify the Agreement and to meet with us for the purpose of negotiating a new Agreement to be effective August 1, 1959. Under the provision quoted above, our Agreement therefore will expire at midnight July 31, 1959, and will not be automatically renewed. See *American Woolen Company,* 57 N.L.R.B. 647. Our letter of July 27, 1959, was not an attempt to cancel the Agreement but was written in contemplation of the fact that it will, by its terms, expire at midnight, July 31, as set forth above.
>
> 2. Aside from the foregoing, the Agreement does not prohibit us from letting work to an independent contractor, and we have the right to do so. See *Amalgamated Association, etc.,* v. *Greyhound Corporation,* 231 F.(2d) 585.
>
> 3. While it will be necessary for us to lay off or terminate employees heretofore performing the work to be taken over by the contractor, we do not contemplate any lockout.

4. As we stated in our letter of July 27, it appears to us that since we will have no employees in the bargaining unit covered by our present Agreement, negotiation of a new or renewed Agreement would appear to us to be pointless. However, we repeat that we will be glad to discuss with you at your convenience any questions that you may have.

After Stumpf and Ferber had read the letter quoted immediately above, it was given to the members of the employees' negotiating committee who read it. Stumpf then stated that the committee was ready to negotiate a bargaining contract and inquired of Thumann whether Respondent had any counter-proposals to submit. Thumann replied, to quote from his credible testimony, "It would be pointless for us to proceed with any suggested modifications of the current agreement since, as of midnight, July 31, 1959, the contract would have been terminated by its own language, as the Union had opened the contract, and that as of that same time the Fluor Maintenance Corporation was taking over the maintenance work of the plant and, therefore, to negotiate any modifications of the agreement, that was being terminated by its own language at midnight, would be pointless." Stumpf maintained that the agreement had not terminated, nor would it terminate at midnight, July 31, because of the automatic renewal clause contained therein. Dave Arca, a member of the committee, then, to again quote Thumann, "indicated concern about the shortness of [notice to the Steelworkers] and also as to why [management was] contracting out maintenance work." Thumann thereupon stated that Respondent had only reached a definite decision to contract out the maintenance work to an independent contractor on July 27; that as soon as he was informed of Respondent's decision he passed the information along to the Steelworkers' representatives so that they would be in a position to discuss Respondent's contract intentions with him; that regardless of the bargaining contract's termination date he nevertheless would have notified the Steelworkers that Respondent was going to contract the maintenance work as soon as he was so advised. Thumann then remarked that during the bargaining negotiations in previous years he had, with the use of charts and statistical information, endeavored to point out "just how expensive and costly our maintenance work was and how it was creating quite a terrific burden upon the Em-

eryville plant" and that as late as 1958, he had stated to the negotiating committee, again with the aid of charts, Respondent's problem of high maintenance costs. Thumann also stated that certain other unions representing Respondent's employees "had joined hands with management, thereby bringing about an economical and efficient operation," but the Steelworkers, even though asked to do so, refused to cooperate in attempting to reduce maintenance costs.

Ferber then brought up the "short time" question. Thumann reiterated the statements he had just made to Arca about the "high cost" problems management had in the plant, adding that Respondent was convinced, after considering the matter for "quite a period of time," that it was more economical to have some independent contractor perform the maintenance work instead of continuing to perform that work with its own employees. Thumann also stated that if the employees or the Steelworkers desired to discuss the maintenance work contract at some later date they should say so and he would give the request due consideration.

When asked whether he would contact the various craft unions in an effort to have the employees about to be terminated retained on the job, Thumann stated that he had already gone to the Central Labor Council Building and informed the business agents of some of the various unions affiliated with the Labor Council about Respondent's contract with Fluor.

Thumann also stated at the aforementioned meeting that the men about to be terminated should apply to Fluor for jobs because he had already told Fluor's representative that some of the employees about to be terminated were very capable maintenance men and that said representative replied that he "would be most happy to interview them and discuss employment with them."

Thumann refused Stumpf's request that Respondent modify the current labor agreement so as to provide that all maintenance work to be performed under the Fluor contract be given to members of Local 1304, stating, "we had entered into this contracting of maintenance work for economy and efficiency of operation, and for us to tie the contractor's hands in any fashion, shape or form would be senseless."

On July 30, copies of the following was distributed by Respondent to its employees:

> Nearly every month the cost of manufacturing the

products of American industry shoots up another couple of percentage points. In most industries, and Fibreboard is no exception, stiff competition makes it impossible to pass on these higher costs through increased prices. This "cost-price" squeeze has forced many companies, and again Fibreboard is no exception, to face the economic facts of life and control costs efficiently all along the line.

This cost control is vital to us at Fibreboard because it is one of the few ways to assure the company and its more than 6,000 employees a future of greater prosperity through more efficient service to its customers.

Here at Emeryville, the cost of doing maintenance work has grown steadily. Studies during the past two years have shown that maintenance of our facilities by an outside crew instead of by our own employees, would produce savings that would reduce the cost of our Emeryville products and make them more competitive.

Each of us is acutely aware of the implications of a decision to take this action. We have reached this decision only after long and careful study of all of the facts.

We are confident that maintenance employees affected by this action—who are members of highly skilled and specialized trades—will have little difficulty in finding new jobs in this time of great demand for skilled labor.

Fortunately, some of the employees affected will be able to share immediately in retirement benefits, which will provide them right away with some continuing income.

Additionally, we have prepared a program of termination allowances which would be distributed on a basis of length of service. For those who will share in retirement benefits, this termination allowance would be an added contribution to their income.

J. P. CORNELL, Manager
Emeryville Floor Covering Plant
W. L. MAFFEY, Works Engineer
Emeryville Utilities Group
E. W. TORBOHN, Manager
Emeryville Insulation Plant
E. J. VAUGHT, Manager
Emeryville Paint Plant
S. F. FRIDELL, Manager
Emeryville Roofing Plant & Felt Mill

At about 6 p.m. on July 31, the Steelworkers established a picket line about Respondent's Emeryville plant and it was still there at the time of the hearing.

Fluor's employees, although the written contract between Fluor and Respondent (to be effective as of August 1) was not actually executed by Respondent until August 4, started performing the maintenance work with the commencement of the July 31 midnight shift.

On July 31, each of the 50 or so terminated maintenance employees was handed a copy of the following:

> Inasmuch as we have contracted out all powerhouse and maintenance work, we will no longer need your services. Here is the pay check due today and you will receive through the mails a termination allowance as shown on the personal statement memo.
>
> Your pay check for this week will either be given to you at the close of the shift today or put in the mail tonight.

On August 21, at the request of Robert Ash, the secretary-manager of the Central Labor Council of Alameda (California) County, the Mayor of Emeryville conferred with Thumann and five other Respondent officials, Ash, the Steelworkers' publicity director, the president of Local 1304, and Emeryville's police sergeant, in an effort to settle the dispute between Respondent and the Steelworkers. It will serve no useful purpose to relate here at length what transpired at that meeting for the only proposal made was Ash's suggestion that Respondent put the discharged men back to work pending a determination by the Board or by the courts of the question of Respondent's right to contract out the work. Thumann, as he had done when Ash had made the suggestion to him previously, turned it down.

B. Concluding findings

The primary and principal question presented is whether substantial evidence on the record considered as a whole supports the allegations of the complaint, as amended, that Respondent's change of operations and its discharge of about 50 maintenance employees because of such change were illegally motivated.

It goes without saying that an employer's right to close

down his plant, or to lay off his employees or otherwise to alter his employees' tenure and working conditions, is circumscribed by the Act only insofar as its exercise does not impinge upon the employees' rights to organize and to engage in other concerted protected activities.[7] Thus, it is well-settled that an employer is free to suspend operations for business reasons which are not concerned with protected employee activity.[8] On the other hand, it is equally settled law that a lockout or layoff prompted, not by business considerations, but by a purpose to defeat organization or other protected activities, is prima facia a violation of the Act.[9]

Thumann and Ben A. Wilson, Respondent's director of purchases, were two of Respondent's officers connected, in one way or another, in bringing about the contract which was eventually given to Fluor; they were the only witnesses who actually knew the motives for contracting out the maintenance work. Each of them testified directly and positively that the contract was made solely for economic reasons.

In substance, the credited testimony of Thumann and Wilson regarding the motives and the events leading up to the Fluor contract is as follows:

In 1954, Respondent being concerned over the high cost of maintenance of its plant initiated a study, which continued into 1956, of its maintenance costs and of the possibility of effecting economies by contracting out the work. The study definitely indicated that savings might be effected. Because other important business matters intervened, nothing was done about the study.

In late June of this year, Thumann told George Burgess, who had recently become Respondent's vice-president in charge of manufacturing, that the question of contracting out the maintenance work had been under consideration and since the contracts with the labor organizations representing the maintenance workers would be terminating shortly, he would like an early answer with respect to Respondent's desires in the matter.

Burgess immediately had the maintenance cost study

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[7] *N.L.R.B.* v. *Jones & Laughlin*, 301 U. S. 1.

[8] *N.L.R.B.* v. *Goodyear Footwear Co.*, 186 F.2d 913 (C.A. 7); *Atlas Underwear Co.* v. *N.L.R.B.*, 116 F.2d 1020 (C.A. 3).

[9] See *Radio Officers' Union* v. *N.L.R.B.* 347 U. S. 17; *N.L.R.B.* v. *Wallick & Schwalm Co.*, 198 F.2d 477 (C.A. 3); *N.L.R.B.* v. *Somerset Classics*, 193 F.2d 613 (C.A. 2).

brought up to date. This study revealed that the maintenance costs of the plant amounted to approximately $750,000 per year.

On or about July 14, Burgess requested Wilson to make a survey of the various maintenance contractors with the idea in mind that Respondent might want to contract out the maintenance work if such an arrangement would save it money. Wilson's investigations led him to Fluor and to three other maintenance contractors.

On July 27, Respondent received from Fluor a written plant survey. On the basis of this survey, coupled with discussions had with Fluor and the other contractors, Respondent estimated its savings by contracting out the maintenance work might run as high as $225,000 per year. Accordingly, Respondent decided, on July 27, to give the contract to Fluor. Fluor was selected over the other contractors mainly because of its experience, reputation, and size.

A draft of a proposed contract was prepared on July 30 and 31, and submitted to Fluor on July 31, with a letter authorizing it to start work on August 3.

On August 4, the draft was revised and then signed by Respondent. Fluor's representative then took the signed agreement to Fluor's main offices, located in Los Angeles, for review by Fluor's attorneys. The contract, bearing Fluor's signature, was returned to Respondent on August 11.

The contract with Fluor is on a cost plus fixed fee basis and is for a term commencing at midnight, July 31, 1959, and ending at midnight, July 31, 1961, but is terminable by Respondent on 60 days' notice.

At the hearing, the General Counsel and, in his brief, counsel for the Steelworkers, vigorously attacked the adequacy of the business reasons advanced by Respondent. The issue is not whether the business reasons advanced were good or bad, but whether Respondent actually in good faith had business motives for contracting out the work, or whether the change in operation was illegally motivated.

The General Counsel and counsel for the Steelworkers contend that Respondent's real motive was to defeat the organizational activities of the employees and to oust the Steelworkers from its plant. They base their arguments not only from what they consider the weakness of Respondent's explanation of its economic reasons, but from such things as (a)

sequence of events, (b) the precipitate manner of accelerating the execution of the maintenance contract, (c) delay in fixing a date for a bargaining conference, and (d) refusal to bargain with the Steelworkers with respect to the Fluor contract or termination pay.

As to (a), the credible testimony of Thumann and Wilson clearly establishes that for at least five years Respondent had under consideration some method whereby it could reduce the plant's maintenance costs. Thumann, in June of this year, called Burgess' attention to this fact. Burgess thereupon brought the cost study up to date and had Wilson ascertain if the work could be performed cheaper by an independent contractor. Wilson's investigation revealed that Respondent could save about a quarter of a million dollars a year by allowing Fluor to perform the maintenance work.

As to (b), the General Counsel and counsel for the Steelworkers base their contention that Respondent's illegal notice in discharging the members of the Steelworkers and hence ridding the plant of that labor organization is inferable from the precipitate manner in which Respondent entered into the contract with Fluor. The undersigned does not believe that, because Respondent accelerated the maintenance change in order to avoid a renewal of the contract with the Steelworkers, which, by its terms, was about to expire, it necessarily follows that the original decision to contract out the maintenance work was to defeat the Steelworkers or was done for any reason violative of the Act. It is the motive for the decision to contract out the work that is material to this controversy rather than the motive for accelerating the changeover.

As to (c), Thumann's delay in arranging a negotiating meeting was due solely to the fact that he was awaiting management's decision on the question whether or not to contract out the maintenance work. The record is barren of any indication that Respondent or Thumann manifested any present or past union animus, that it or he was motivated by any improper consideration in delaying fixing a date for a negotiating meeting, or that it or he desired to avoid management's collective bargaining obligations. These findings are buttressed by the fact that in 1957 the first bargaining meeting was not held until July 23; that the first 1958 bargaining meeting was not held until July 13; and that the 1958 bargaining contract was not signed until September 24.

As to (d), the credible evidence clearly establishes that the Fluor contract was entered into for *bona fide* business reasons and not as a part of any scheme for evading any statutory obligation. Respondent therefore was under no obligation to bargain with the Steelworkers for any unit of employees which included maintenance workers because upon the execution of the Fluor contract it no longer had any such workers in its employ. The services of the maintenance employees were validly terminated when Respondent, in the exercise of its business judgment, decided to contract out the maintenance work.

The General Counsel and the Steelworkers also contended that Respondent violated Section 8(a)(5) of the Act because it refused to bargain with the Steelworkers regarding the maintenance employees' termination pay. The record does not support such a contention. On the other hand, the credible evidence discloses that at the July 27 meeting Thumann told Ferber and Stumpf that not only was Respondent prepared to give the terminated employees whatever termination pay due under the bargaining contract, but it was giving them additional allowances and benefits not called for under said contract. Again at the July 30 meeting with Stumpf, Ferber, and the negotiating committee, Thumann brought up the subject of termination pay and outlined what Respondent intended to give the terminated employees. No objections or proposals were made by any Steelworkers' representative at either meeting or since.

Relying heavily upon *N.L.R.B.* v. *Lion Oil Company and Monsanto Chemical Company*, 352 U. S. 282, the General Counsel and counsel for the Steelworkers maintain that Respondent violated Section 8(d) of the Act because it did not serve the statutory notice of its intention to terminate the bargaining contract. Said counsel seem to misconstrue the Court's opinion in that case as well as the requirements called for by Section 8(d). As the Court in the *Lion* case said:

> In this case we are called upon to interpret Section 8(d). . . . In particular we are concerned with Section 8(d)(4), which provides that a party who wishes to modify or terminate a collective bargaining contract must "continue . . . in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after . . . notice [of his wish to modify or terminate] is given or

until the expiration date of such contract whichever occurs later."

Here, the contract terminated at midnight on July 31, not only by its terms but also by reason of the Steelworkers' May 26 notice. It cannot be said, with any degree of success, that the proposed contract changes submitted by the Steelworkers were not substantial. In fact, the proposals were very substantial and affect each "cost" provision of the then existing contract. Under the circumstances, Respondent was under no statutory duty to serve any notice called for under Section 8(d). Since the Steelworkers' May 26 notice requesting bargaining meetings looking toward a "new contract" was timely served, the automatic renewal clause of the contract in question fell with such service, and the undersigned so finds.

Upon the record as a whole, the undersigned finds that the allegations of the complaint, as amended, that Respondent had engaged in certain acts and conduct violative of Section 8(a)(1), (3) and (5) of the Act are not supported by substantial evidence. Accordingly, the undersigned recommends that the allegations of the complaint, as amended, that Respondent violated Section 8(a)(1), (3) and (5) of the Act be dismissed.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

Conclusions of Law

1. Fibreboard Paper Products Corporation, Emeryville, California, is engaged in, and during all times material herein was engaged in, commerce within the meaning of Section 2 (6) and (7) of the Act.

2. United Steelworkers of America, AFL-CIO, and its Local Union 1304, are labor organizations, within the meaning of Section 2(5) of the Act.

3. The allegations of the complaint, as amended, that Respondent has engaged in, and is engaging in, unfair labor practices, within the meaning of Section 8(a)(1), (3) and (5) of the Act, have not been sustained by substantial evidence.

RECOMMENDATIONS

It is recommended that the complaint, as amended, be dismissed in its entirety.

In the event no exceptions are filed, as provided by the

Rules and Regulations of the Board, Series 6, as amended, the findings, conclusions and recommendations herein contained shall, as provided in said Rules and Regulations, be adopted by the Board and become its findings, conclusions and order, and all objections thereto shall be waived for all purposes.

Dated this day of November 1959.

HOWARD MYERS
Trial Examiner

EXCERPTS FROM TRANSCRIPT OF TESTIMONY

Before the

NATIONAL LABOR RELATIONS BOARD

Docket No. 20-CA-1682

In the Matter of:

FIBREBOARD PAPER PRODUCTS CORP.

and

EAST BAY UNION OF MACHINISTS, LOCAL 1304
UNITED STEELWORKERS OF AMERICA, AFL-CIO

and

UNITED STEELWORKERS OF AMERICA, AFL-CIO

San Francisco, California

September 21, 1959

Pursuant to notice, the above-entitled matter came on for hearing at 10:15 o'clock, a.m.

BEFORE:

HOWARD MYERS, Trial Examiner.

APPEARANCES:

DAVID E. DAVIS and EDWARD J. McFETRIDGE, 630 Market Street, San Francisco, California, appearing on behalf of the General Counsel, National Labor Relations Board.

DARWIN & PECKHAM by JAY A. DARWIN, 68 Post Street, San Francisco, California, appearing on behalf of East Bay Union of Machinists, Local 1304, United Steelworkers of America, AFL-CIO, Charging Party.

BROBECK, PHLEGER & HARRISON by MARION B. PLANT and JAMES K. PARKER 111 Sutter Street, San Francisco, California, appearing on behalf of Fibreboard Paper Products Corp., Respondent.

• • • • •

R. C. THUMANN

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: What is your name, sir?

THE WITNESS: R. C. Thumann.

TRIAL EXAMINER: Mr. Thumann, where do you live?

THE WITNESS: 59 Prospect Road, Piedmont.

TRIAL EXAMINER: You may be seated, sir.

THE WITNESS: Thank you.

TRIAL EXAMINER: Mr. Davis, you may proceed with the examination of Mr. Thumann, who has been duly sworn.

Direct Examination

Q. (By Mr. Davis) Mr. Thumann, you are employed by Fibreboard?

A. Correct.

Q. In what capacity?

A. Director of Industrial Relations.

Q. How long have you been so employed?

A. Since 1949.

Q. And in your position as Director of Industrial Relations, you are the chief negotiator with the various unions?

A. Right.

Q. And one of the unions you have been negotiating with since you have held this position is Local 1304 and the United Steelworkers of America?

A. Correct.

* * * * *

Will you stipulate that this is a copy of the contract between the Respondent and the Steelworkers, which was effective August 1, 1958, to and including July 31, 1959?

MR. PLANT: So stipulated, subject to a check of the document.

TRIAL EXAMINER: Very well. Go ahead, Mr. Davis.

* * * * *

Q. (By Mr. Davis) Now, Mr. Thumann, would you describe briefly the physical layout of the plant, the Fibreboard plant at Emeryville?

A. Yes. It is approximately fifty acres, and on the south side is Powell Street, on the east side is the Southern Pacific Railroad tracks, on the north side is the continuation of 64th Street, and on the west side is the East Shore Highway. The entrance to the plant, used by employees, is through the 64th

Street entrance. The truck entrance, and also used by some employees, is on Powell Street.

TRIAL EXAMINER: When you say "truck entrance," do you mean for deliveries?

THE WITNESS: For deliveries and taking away merchandise.

Q. (By Mr. Davis) And the inside of the plant has certain areas for production. Would you describe that, please?

A. Yes. There is a building materials department, manufacturing section as well as warehouse section; there is the floor covering division, including manufacturing and warehousing; there is an industrial insulation plant, which includes manufacturing and warehousing; there is the paint plant, which includes manufacturing and warehousing; there is a power house, machine shops, and other rooms, dressing rooms and things of that sort.

Q. Are the power house and machine shops located in one building?

A. The power house is located in one building. The various machine shops are in various plants.

Q. How many plants are there in total?

A. There are four plants.

Q. And has each plant a name?

A. Yes.

Q. Will you give us those?

A. Building materials plant, the industrial insulation plant, the floor covering plant, and the paint plant.

Q. And in what plant is the power house located?

A. The power house is not located in any plant. It is a separate unit by itself.

Q. That would be a fifth unit?

A. That's right.

Q. Is the power house an around-the-clock operation?

A. It is.

Q. And how many employees are employed in the power house?

A. Roughly, if my memory serves me right, it is approximately between 28 and 11.

Q. And they work around the clock on various shifts?
A. That's right.

Q. And that is a permanent matter, it is something that is needed around the clock?
A. That's right.

• • • • •

Q. The maintenance machinists and mechanics, where do they work, that are in this unit?
A. They work all around the plant. They work in the four plants that I mentioned before, as well as working in a central shop.

Q. As needed, is that correct?
A. As needed.

Q. Now, sometime in 1951, Mr. Thumann, this unit was certified by the Board for the purposes of a unit shop election, was it not?

• • • • •

A. As to the date, I don't recall, but I know it was certified for a union shop.

Q. Election?
A. Election, yes.
TRIAL EXAMINER: Prior to 1952 when Congress amended the Act?
THE WITNESS: Yes, that's right.

Q. (By Mr. Davis) I show you a document which is marked for identification as General Counsel's Exhibit No. 3 and ask you what it is, please?

• • • • •

A. This document is a letter that was mailed on May 26th and received in my office on May 29, in which is announced—
MR. PLANT: I will object to any testimony as to what the document contains. It speaks for itself.
TRIAL EXAMINER: It is a paper that you received, and it is dated May 26th, 1959?
THE WITNESS: Right.
TRIAL EXAMINER: And when did you say you received it?

THE WITNESS: May 29.

TRIAL EXAMINER: That is all.

MR. DAVIS: I am offering this document in evidence as General Counsel's Exhibit No. 3.

TRIAL EXAMINER: Any objection?

MR. PLANT: No objection.

TRIAL EXAMINER: There being no objection, the paper is received in evidence, and I will ask the Reporter to kindly mark it as General Counsel's Exhibit No. 3.

• • • • •

Q. (By Mr. Davis) Now, in reply to that letter of May 26, which is in evidence as General Counsel's Exhibit No. 3, I show you a photostat copy of a letter and ask you if that is the letter that you sent in reply.

• • • • •

A. That's right.

MR. DAVIS: I am offering General Counsel's No. 4 in evidence.

• • • • •

TRIAL EXAMINER: There being no objection, the paper is received in evidence, and I will ask the Reporter to kindly mark it as General Counsel's Exhibit No. 4.

• • • • •

Q. I show you a document which is marked for identification as General Counsel's Exhibit No. 5 and ask you to describe what it is.

• • • • •

A. It is a paper I received, dated June 15, and it was received in my office on June 16, 1959.

Q. And this is a communication from whom?

A. It is from East Bay—

TRIAL EXAMINER: Purportedly.

A. (Continuing) Purportedly from East Bay Union of Machinists, Local 1304, U. S. of A., AFL-CIO.

• • • • •

Q. (By Mr. Davis) And did this letter contain an attachment headed "PABCO Proposals for 1959"?

A. Yes.

• • • • •

MR. DAVIS: It is marked General Counsel's Exhibit No. 5, and I am now offering it in evidence.

• • • • •

MR. PLANT: Let the record show that Exhibit 5 consists both of the letter of June 15th and of the attachment.

• • • • •

TRIAL EXAMINER: There being no objection, the papers are received in evidence, and I will ask the Reporter to kindly mark them as General Counsel's Exhibit No. 5, and the exhibit consists of a letter or a paper, rather, dated June 15, 1959, to which is attached a one-sheet enclosure, and the General Counsel may substitute photostats in lieu of the originals of these two papers.

• • • • •

Q. And General Counsel's Exhibit 6-A for identification is a letter dated July 27, 1959, from you to Mr. Stumpf as representative of the Steelworkers, is that correct?

A. That's right.

Q. And 6-B is the same letter to Mr. Ferber, is that correct?

A. That's right.

• • • • •

MR. DAVIS: I am offering General Counsel's 6-A and 6-B in evidence.

• • • • •

TRIAL EXAMINER: There being no objection, the papers are received in evidence, and I will ask the Reporter to kindly mark them as General Counsel's Exhibits Nos. 6-A and 6-B, and General Counsel may substitute photostats thereof in lieu of the originals.

• • • • •

Q. (By Mr. Davis) I show you a document which is

marked as General Counsel's Exhibit No. 7 and ask you what it is.

• • • • •

TRIAL EXAMINER: He just wants to describe it. It is a piece of paper dated such-and-such, purported to be signed by so-and-so.

A. It is a piece of paper dated July 29, 1959,—

TRIAL EXAMINER: Purportedly.

A. (Continuing)—and received on the same day.

TRIAL EXAMINER: By whom?

THE WITNESS: It is addressed to myself, and it is purported to be signed by Mr. Stumpf and Mr. Ferber, and it is on the stationery of the United Steelworkers of America.

Q. (By Mr. Davis) And you did receive that?

A. I did receive it.

MR. DAVIS: I am offering General Counsel's No. 7 in evidence.

• • • • •

TRIAL EXAMINER: There being no objection, the paper is received in evidence, and I will ask the Reporter to kindly mark it as General Counsel's No. 7, and the General Counsel may substitute a photostat in lieu of the original thereof.

• • • • •

Q. (By Mr. Davis) Now, Mr. Thumann, I show you a document which is marked as General Counsel's Exhibit No. 8. Did you send the original of that to the Union?

• • • • •

A. I did.

• • • • •

Q. (By Mr. Davis) You sent this on July 30?

A. On July 30. I delivered it by hand to Mr. Stumpf and Mr. Ferber.

TRIAL EXAMINER: You mean you gave each a copy?

THE WITNESS: I gave each an original copy.

MR. DAVIS: I am offering General Counsel's No. 8 in evidence, and ask permission to withdraw the original and substitute two copies.

• • • • •

TRIAL EXAMINER: There being no objection, the paper is received in evidence, and I will ask the Reporter to kindly mark it as General Counsel's Exhibit No. 8, and the General Counsel may substitute a photostat in lieu of the original thereof.

• • • • •

Q. (By Mr. Davis) Now, subsequent to your sending the letter dated June 2, which is General Counsel's Exhibit No. 4,—

TRIAL EXAMINER: Wait a minute. Show it to the witness, please.

Q. (By Mr. Davis)—did you arrange any meetings with the Union?

A. Yes, I arranged a meeting for July 30.

Q. Did you arrange any meeting, or did you make any arrangements prior to July 30?

A. Yes. I phoned Mr. Stumpf and asked him to meet me at Pland's Restaurant on the evening of—or late afternoon of July 27 and to bring Mr. Ferber along.

TRIAL EXAMINER: What is the name of that—

THE WITNESS: Pland's Restaurant, on Broadway and MacArthur Boulevard, in Oakland.

• • • • •

Q. All right. So referring to August 21, your Answer states that there was a negotiating meeting on that date. I would like to know the subjects that were discussed at that meeting.

A. Yes. The Mayor invited me to a meeting that was—

TRIAL EXAMINER: The Mayor of what?

THE WITNESS: The Mayor of Emeryville.

A. (Continuing)—that was being called at the request of Mr. Bob Ash and his committee. Mr. Ash is the Secretary-Manager of the Central Labor Council of Alameda County.

TRIAL EXAMINER: What is his first name?

THE WITNESS: Robert.

• • • • •

TRIAL EXAMINER: What was discussed at the meeting.

A. At that meeting Mr. Robert Ash announced that he had asked the meeting to be called and that he had a proposal to make.

TRIAL EXAMINER: Well, first of all, who was there?

THE WITNESS: The Mayor of Emeryville, Sergeant Steeves of the Emeryville Police Department, Robert Ash of the Central Labor Council, a gentleman whose name I do not recall, but he said he was the Publicity Director for the Steelworkers Union, and Robert Smith, who was President of Local 1304, East Bay Union of Machinists.

TRIAL EXAMINER: And was there anybody there representing the Company?

THE WITNESS: Yes.

TRIAL EXAMINER: Who?

THE WITNESS: With me at the meeting was Mr. Robert Baldwin, our Personnel Manager of the Emeryville Plant; Mr. Cornell, Plant Manager of the floor covering department; Mr. Maffey, our utilities engineer of the Emeryville Plant; Mr. Fridell,—

Q. (By Mr. Davis) Well, as long as we have got that far, let's get the entire background.

MR. PLANT: Have you finished your answer?

A. (Continuing) Mr. Dick Conlon.

Q. (By Mr. Davis) Mr. Thumann, where did this meeting take place?

A. In the City Hall, Second Floor, of the City of Emeryville.

Q. On August 21?

A. That's right.

Q. At what time?

A. At approximately 3:30 in the afternoon.

Q. And how were you notified of this meeting?

A. The day before, Mayor Lacoste called me on the telephone.

Q. And what did he say to you?

A. He wanted to know if I would be willing to attend a meeting in his office, as Mr. Ash of the Central Labor Council had requested such a meeting to be held.

Q. Did he tell you the purpose of the meeting?

A. The purpose of the meeting, yes, was to see if this matter that had brought the picket lines around the plant could be resolved.

Q. And—

TRIAL EXAMINER: What was your answer?

THE WITNESS: I told him I would be most happy to meet him.

Q. (By Mr. Davis) And then you arrived with these gentlemen representing the Company, is that correct?

A. That's right.

Q. And when you arrived there, you saw Mr. Ash and these other gentlemen you named?

A. That's right.

Q. Was Mr. Ferber there?

A. When we arrived in front of the City Hall in Emeryville we saw the gentlemen I mentioned coming from cars, going in, and we also saw in a car Mr. Ferber and Mr. Stumpf. They did not come to the meeting.

Q. They did not come to the meeting?

A. That's right.

Q. Neither Mr. Stumpf nor Mr. Ferber came to the meeting?

A. That's right.

Q. You said there was the President of Local 1304 present.

A. That's right.

Q. Is he an employee of—

A. No.

Q. —of Fibreboard?

A. No.

• • • • •

Do you know who were the members of the negotiating committee of the Union and—

THE WITNESS; The members of the committee who attended the meeting on July 30 in the conference room in the Emeryville plant were not in attendance.

Q. (By Mr. Davis) And on July 30, of course, they were introduced to you as the negotiating committee?

A. No, they were not.

Q. Did you know that that was the case?

A. Yes.

Q. You knew that?

A. Yes.

Q. How did you know that?

A. From prior years.

Q. And in prior years you always negotiated with the negotiating committee, is that correct?

A. That's right.

Q. In addition to Mr. Ferber and Mr. Stumpf?

A. That's right.

Q. And that was not the kind of committee present on August 21, is that correct?

A. That's right.

Q. Now, will you tell us what occurred at this meeting of August 21?

A. Mr. Ash immediately made a proposal, and that proposal was that the members of 1304 be put back to work in the Emeryville plant and the picket line would be withdrawn, and that the matter then would be determined by the NLRB or appropriate courts as to whether the issue was right that management had undertaken to do.

I countered and told Mr. Ash that I did not wish to appear hasty, but he had called me some few weeks before, made the same suggestion. That call had been followed by a call from Mr. Stumpf later in the evening, who wanted to know if Mr. Ash had contacted me on that matter, and therefore I was going to give him the same answer that I gave him when he originally called me.

TRIAL EXAMINER: Gave whom?

THE WITNESS: Mr. Ash, and also to Mr. Stumpf later in the evening. Mr. Ash and I had discussed the matter at quite some length over the telephone, and when I pointed out to him that there were several problems connected with trying to work out what he suggested—

TRIAL EXAMINER: Wait a minute. Let me follow you. This was repeated at the August 21 meeting?

THE WITNESS: It was repeated on August 21.

TRIAL EXAMINER: And when did you first have the telephone call with Mr. Ash?

THE WITNESS: As I recall, it was just about two weeks prior to the August 21 meeting.

TRIAL EXAMINER: And the evening of your talk—

THE WITNESS: The same evening.

TRIAL EXAMINER:—the evening of your talk with Mr. Ash, you had a talk with Mr. Stumpf?

THE WITNESS: Over the telephone.

TRIAL EXAMINER: All right. Both were over the telephone?

THE WITNESS: Both were over the telephone.

Q. (By Mr. Davis) Mr. Thumann, would you direct your answers to what occurred on August 21?

TRIAL EXAMINER: He is, but I was trying to clear up something.

MR. DAVIS: All right.

Q. (By Mr. Davis) Would you please—

A. That's right.

Q. —continue?

A. In that meeting of August 21 I reminded Mr. Ash that I had talked with him over the telephone and that my answer was the same as it was at that time, it was not hasty, and that was that there was not a possible thing to do and I would suggest that he would withdraw the picket lines and that the Fluor Maintenance people would continue or would do the work that they were contracted for to do, and that the matters would be resolved by the NLRB or appropriate courts, and that if the 1304 believed that they were right, undoubtedly the members who were affected and who would return to work, if that was the case, would undoubtedly be made whole.

Mr. Ash immediately replied and said that he couldn't sell that to the 1304 membership, so did Mr. Smith and so did the other gentlemen from the Steelworkers Union.

TRIAL EXAMINER: I don't quite follow you. I thought you said at the beginning that Mr. Ash said, "Now, we will withdraw the picket line if you put the men back, and then leave it up to the NLRB or some courts."

THE WITNESS: That's right.

TRIAL EXAMINER: And then you came around and offered the same proposition?

THE WITNESS: No. I said for him to withdraw the picket line but the Fluor Maintenance employees would do the maintenance work in the plant.

TRIAL EXAMINER: But you didn't mention anything about the NLRB?

THE WITNESS: I said this, that then the matter would proceed through the NLRB or through the courts, and after the determination was made as to whether the matter was right in contracting out this maintenance work, then whatever that decision was, if the decision was that we were wrong and the 1304 employees should be restored to their jobs, they would undoubtedly be made whole.

TRIAL EXAMINER: Given back pay?

THE WITNESS: That's right.

TRIAL EXAMINER: What difference was there between you and Ash at that time?

THE WITNESS: Ash suggested that the members go back to work—

TRIAL EXAMINER: Immediately?

THE WITNESS: Immediately, that's right.

TRIAL EXAMINER: And?

THE WITNESS: And then have the issue resolved. And I suggested that they do not go back to work because they would be made whole, and also it would permit the other 615 employees who would not receive any back pay, when they got back to work, or unemployment compensation, would be able to be restored to their jobs and the plant would be in operation.

TRIAL EXAMINER: Now I understand.

Q. (By Mr. Davis) I might as well ask you at this time, Mr. Thumann, how many employees were represented by 1304 in this unit?

A. Who were working on the 31st of July?

Q. Yes.

A. Approximately fifty.

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Q. (By Mr. Davis) Now, on July 27 there was a meeting between you and Mr. Stumpf and Mr. Ferber in Pland's Restaurant. How did that meeting come about?

A. As soon as I was informed by management on the morning of July 27 that the decision had been reached that maintenance work would be contracted out, I immediately went to the telephone and phoned Mr. Stumpf, whom I reached at the offices of the East Bay Union of Machinists. That was shortly before noon. I informed him that I had a matter of considerable import to talk to him about and asked that he and Mr. Ferber meet with me as soon as possible.

He told me that they had some negotiation meetings or meeting lined up for that afternoon with Grove Regulator and that I should phone him in the afternoon.

I did phone him in the afternoon, and Mr. Ferber told me it would be possible to meet with me at Pland's Restaurant at 5:30 that afternoon.

Q. And where in Pland's Restaurant did you meet?

A. Broadway and MacArthur Boulevard in Oakland, California.

Q. In what part of the restaurant?

A. We met in the upper level dining room area.

• • • • •

Q. And how long were you there?

A. I would say we were there about, oh, half an hour.

Q. Was any negotiating committee there?

A. No. Mr. Ferber and Mr. Stumpf.

TRIAL EXAMINER: Just the three of you?

THE WITNESS: Just the three of us.

Q. (By Mr. Davis) How did the meeting commence?

A. Mr. Ferber told me that I would receive through the mail the first part of the week a letter from the Central Labor Council in which he had asked for strike sanction against the plant.

I told him the reason I had requested the meeting was that I had something of considerable import to discuss with them, and I handed to Mr. Stumpf and to Mr. Ferber an Ozalid copy of a letter that was going through the mails to them.

Q. And that was General Counsel's Exhibit No. 6-A and Exhibit No. 6-B, is that correct?

A. Right. They both read the letter and expressed concern, indicated that it could not be done, that if we did do it a picket line would be put around the plant.

I questioned as to why they said we could not contract out maintenance work.

The conversation soon developed that they were concerned with 1304 doing the maintenance work and the picket line, when I questioned further, would be against the contractor for the purpose of having him employ 1304 people.

I suggested that they contact their counsel, which they told me they intended to do, to make dead certain that such work—that they were right in the approach that they were taking.

I told them that we had planned to give pro rata vacations, which was not in our contract, but we would do that up and above the contract upon termination, and that we would arrange termination pay that was predicated upon the employees of from five to ten years of service of four weeks' pay, and from ten to fifteen years of service, five weeks' pay, from fifteen to twenty years' service, six weeks' pay, and over twenty years, seven weeks' pay, and that all of the pension rights that any of the employees would have would certainly be theirs, such as some I knew would be able to retire, others would have vested interests, and others would have optional early retirement, and those who were not taken care of for

some pension rights would, of course, receive their contributions back again in keeping with the pension plan at 2 per cent compounded interest.

I was asked as to who the contractor would be. I told Mr. Ferber and Mr. Stumpf that was being decided between two contractors. Mr. Ferber asked me if I would let him know the next day as to who the contractor would be. I told him I would.

Q. Did Mr. Ferber and Mr. Stumpf tell you that many of the employees had twenty and thirty years of seniority there, that they were going to protect the employees' rights?

A. No.

Q. They did not?

A. Not at that time.

Q. Did they tell you they were going to protect the rights of the Union members to work on those jobs?

A. Mr. Stumpf told me that there had been court cases and NLRB decisions which said that while you could contract out the work, nevertheless the people who had been doing the work before would continue to do the work.

Q. And did he say he was going to protect the rights of those people?

MR. PLANT: Objected to as asked and answered.

TRIAL EXAMINER: Overruled.

MR. DAVIS: Answer the question.

A. I suggested to him that he should contact his counsel.

TRIAL EXAMINER: Will the Reporter please read the question for the witness?

(Question read.)

A. He said that he intended to see that the work was performed by 1304 people.

Q. (By Mr. Davis) He didn't use the words "protect the rights of these people"?

A. Not to my recollection.

Q. Now, before arriving at a decision to contract out the work, you had not consulted with the Union or a Union representative at any time, is that correct?

A. Before?

Q. Yes.

A. No.

• • • • •

Did you at any time prior to this date of July 27 discuss

or take up or notify the Union of your intention or the Company's intention to contract out this work?

THE WITNESS: No.

Q. (By Mr. Davis) Did you discuss that question on July 27?

A. You have lost me. Discuss what?

Q. The question of whether or not the Company would contract out the work.

MR. PLANT: Objected to as asked and answered. The witness has already testified to that.

TRIAL EXAMINER: I will overrule the objection.

A. There was nothing in the conversation that would bring that up for discussion. I submitted the letter, discussed the reasons for doing it, and there was never any discussion. The only discussion was to get a picket line—

Q. (By Mr. Davis) Did they discuss the Company's right to do so?

• • • • •

A. The conversation at the beginning was of great concern, and I am quite sure that both gentlemen made remarks that they reversed themselves on somewhat later on in our conversation. That was all at the beginning, that we couldn't do such a thing, and then it developed later on that what was really meant was that 1304 people should do the work, and there was no question as to our contracting out maintenance work. As a matter of fact, Mr. Stumpf told me that there were many NLRB and court decisions on that very matter.

MR. PLANT: That is, he told you or—

THE WITNESS: Mr. Stumpf told me.

TRIAL EXAMINER: That an employer may do so?

THE WITNESS: That's right, and that the work should be performed, however, by the people who had been doing it before.

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TRIAL EXAMINER: Stumpf said that the Labor Board, meaning the National Labor Relations Board,—

THE WITNESS: That's right.

TRIAL EXAMINER:—said that an employer may contract out certain work, provided that the Union that was in the plant could—that its members had it performed that way?

THE WITNESS: That's right.

TRIAL EXAMINER: Therefore, he didn't agree with you in saying that the subcontractor or whoever you were going to contract the work out to—

THE WITNESS: He didn't disagree.

TRIAL EXAMINER: Well, he disagreed insofar as he was saying that you had no right to tell the contractor who to hire and who not to hire, is that right; was that brought up?

THE WITNESS: I told— Yes, I told him that I was not in a position to tell the contractor whom he should hire and whom he should not hire, that is the contractor's own—

TRIAL EXAMINER: And Stumpf said that the Labor Board said so-and-so and so-and-so?

THE WITNESS: Right.

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Q. (By Mr. Davis) Mr. Thumann, how did the meeting of July 30 come about?

A. The meeting on the evening of July 27, when I met with Mr. Stumpf and Mr. Ferber, Mr. Ferber suggested that we should have a meeting perhaps on Thursday. And then the next day when I phoned Mr. Ferber to let him know that the Fluor Maintenance people would be doing the work, Mr. Ferber then suggested that we meet on Thursday morning. And I told him that Thursday afternoon at 1:30 would fit in better with my calendar, and he agreed to that.

Q. Is that the entire conversation on the telephone with Mr.—

A. No, it was not.

Q. Would you give us the rest of it?

A. The conversation on the telephone was the result of my having told Mr. Ferber that I would let him know who the contractor was. I called him up and told him that it was to be the Fluor Maintenance Company.

He said that he was very sorry to hear that, that it would certainly mean trouble and a picket line.

I asked him if he had consulted with his attorneys relative to the matter and whether—and he said that he had.

And I said, "Did you also consult in regard to what we did as to contracting out maintenance work?"

And he said, "No, I have not gone into that matter that deep. All I did was to go in to determine that the work should be performed by members of our Union."

TRIAL EXAMINER: Is it correct that this conversation took place over the telephone on July 27?

THE WITNESS: July 28th.

TRIAL EXAMINER: 28th. Did you call Mr.—

THE WITNESS: I called Mr. Ferber.

Q. (By Mr. Davis) Continue. Tell us what the conversation was.

A. We discussed the meeting that was to take place the next day. Mr. Ferber indicated—

TRIAL EXAMINER: What do you mean by "the next day"?

THE WITNESS: I mean on Thursday, the 30th. This was Tuesday. And Mr. Ferber indicated that he would like to have it in the morning as he had some appointments in the afternoon, but after discussion on that matter we finally worked it out because he was able to, or felt he could postpone the meetings of Thursday afternoon.

Q. (By Mr. Davis) Is this all that you recall?

A. (No response.)

Q. Mr. Ferber requested a meeting, did he not?

A. What?

Q. In this telephone conversation, Mr. Ferber requested a meeting, did he not?

A. Monday evening when I talked with him at Pland's Restaurant, he suggested that we should have a meeting, and the reason he gave at that time for having a meeting was so as to keep the boys from becoming excited and walking off the job before the contract had reached its anniversary date or it was terminated.

Q. Did he ask for a meeting on the telephone?

A. Yes, on Thursday.

Q. What did you reply when he asked for a meeting?

A. I asked him for what purpose did he wish to have a meeting.

Q. What did he say?

A. He said that he wished to have it on record as what the Company was planning to do.

Q. And what did you say to that?

A. And I told him that was agreeable to me.

Q. Didn't you ask him if he meant by that that he wanted the record to show that they had decided to contract out the work?

A. That's right.

Q. And he said yes?

A. Yes, that's right.

Q. And you said a registered letter would do that?

A. I said that the registered letter would show that to meet for negotiation purposes would be pointless.

Q. Didn't you say the registered letter would do that?

A. Would do that, yes, I did.

Q. With reference to—That the Company had decided to contract out the work?

A. That's right, that's right.

Q. And he told you that the letter had not reached him?

A. That's right.

Q. But regardless, he wanted the committee to hear it verbally?

A. That's right, right.

TRIAL EXAMINER: Now, wait a minute.

Q. (By Mr. Davis) And—

TRIAL EXAMINER: Wait a minute. Will you pardon me a minute? I just want to get this chronology straight in my own mind.

On July 27—

MR. DAVIS: We are talking about the phone call of July 28.

TRIAL EXAMINER: The 28th. Did you have a meeting the day before with—

THE WITNESS: The evening before, on July 27th, which was a Monday night, I met with Mr. Stumpf and Mr. Ferber at Pland's Restaurant.

TRIAL EXAMINER: Is that the time you gave them a copy of the letter?

THE WITNESS: That's correct.

TRIAL EXAMINER: And then the next day you had a conversation about a registered letter?

THE WITNESS: That's right. At the time I gave Mr. Stumpf and Mr. Ferber a copy of the letter I told them that a letter was coming through the mails to them, telling them the same thing as what was being said in this letter, as it was a copy of what was going through the mails to them.

TRIAL EXAMINER: So on the 28th he said he still did not get the letter?

THE WITNESS: That I had sent through the mails to him.

TRIAL EXAMINER: All right.

THE WITNESS: Correct.

Q. (By Mr. Davis) You had suggested Friday morning as the time for a meeting, that would be July 31, is that correct?

A. No, no. We had tentatively set up Thursday as the day on which we would meet on Monday evening.

Q. But in this phone conversation—

TRIAL EXAMINER: You mean on Monday evening you set up the date tentatively for Thursday?

THE WITNESS: For Thursday, correct.

TRIAL EXAMINER: Why did you call him on Tuesday?

THE WITNESS: As a result of my promise to him the night before to let him know who the contractor would be.

TRIAL EXAMINER: Oh.

Q. (By Mr. Davis) And yet on Tuesday when you called him,—

A. On Tuesday, the 28th, correct.

Q. —when you called him and he requested a meeting on the phone, you told him for what purpose the meeting would be, is that correct, you asked him for what purpose?

• • • • •

A. That's right, that's right.

Q. (By Mr. Davis) And he replied, "To get the Company's position on record"?

A. That's right.

Q. And itsn't it a fact that you suggested Friday morning as the time for a meeting?

A. I don't recollect.

Q. And he said, "We had better hold it on Thursday," and he preferred the morning as he had an afternoon meeting,—

A. Yes.

Q. —is that correct?

A. Yes, I think you are right, because I recall that he preferred it on Thursday morning.

Q. And you did suggest Friday morning?

A. Correct.

Q. And then you told him you were tied up Thursday in the morning?

A. That's right.

• • • • •

Q. (By Mr. Davis) You told him you were tied up Thursday morning, is that correct?

A. That's right.

Q. And he said no, he would cancel his Thursday meetings so you could meet on Thursday?

A. Yes. Let's get this straight, Mr. Davis. Monday evening, Mr. Ferber and I set up a date tentatively.

Q. We are talking about Thursday—Tuesday?

A. Tentatively for Thursday, then on Tuesday, when I phoned Mr. Ferber and he suggested about the meeting, I suggested Friday. He said he wanted it Thursday morning, and I said, "I can't because I am tied up on Thursday morning."

And he said he had a date for Thursday afternoon, so I then suggested Friday, and he said, "Well, I think I can postpone my Thursday afternoon meeting."

I said, "Fine, then we will meet Thursday afternoon."

Q. So he told you he was going to cancel or postpone his Thursday afternoon meeting so you could meet on Thursday, is that right?

A. That's right.

Q. Okay. Did you meet on Thursday?

A. We did.

Q. And that was on July 30?

A. Right.

Q. And where did you meet?

A. We met in a conference room of the personnel building at the Emeryville Plant.

Q. What time?

A. The meeting was set for 1:30, but we got together about 2:00 o'clock.

Q. And who was present?

A. I beg your pardon?

Q. Who was present?

A. For the Union there was Mr. Stumpf, Mr. Ferber, Mr. Arca and various members who are a part of the negotiating committee and who are employees in the plant, Mr. Arthur Hellender, who is an assistant to Mr. Robert Ash of the Central Labor Council, for management there was Mr. Baldwin, Mr. Maffey, Mr. Lorentzen and Mr. Fridell.

Q. And this more or less followed the pattern of previous years when you would meet with a negotiating committee with the Company for—

A. You mean the personnel that was there?

Q. That's right.

A. No. Mr. Arthur Hellender had not been there before.

Q. But otherwise—

A. But otherwise it was very similar.

Q. And how did the meeting commence?

A. I distributed the letter that you have entered in evidence here.

Q. That is General Counsel's Exhibit No. 8?

A. No, No. 8 is the letter that was sent to me. I distributed the letter which is marked Exhibit—Is this the exhibit number?

Q. Yes. This should be marked No. 8. This is the letter you distributed?

A. It was marked General Counsel's No. 8?

Q. Yes.

A. It was addressed, under the date of July 30, to Mr. Stumpf and to Mr. Ferber. I gave each of the gentlemen a signed copy of this letter.

MR. PLANT: By "each of the gentlemen," do you mean those two—

THE WITNESS: Mr. Stumpf and Mr. Ferber, each one a signed copy of the letter.

Q. (By Mr. Davis) And then what happened?

A. The letter was read and it was passed around amongst the Union committee, and after they had all read that, Mr. Stumpf then said that the committee was there for the purpose of negotiating a contract and wanted to know what counter-proposals management had to offer for the suggested modifications that the Union had sent in to us.

I informed Mr. Stumpf that it would be pointless for us to proceed with any suggested modifications of the current agreement since, as of midnight, July 31, 1959, the contract would have been terminated by its own language, as the Union had opened up the contract, and that as of that same time the Fluor Maintenance Corporation was taking over the maintenance work of the plant and, therefore, to negotiate any modifications of the agreement, that was being terminated by its own language at midnight, would be pointless.

Q. What did Mr. Stumpf say to that?

A. Mr. Stumpf did not agree with that. He contended that the contract was self-renewing, that it had one more year to run.

And I told him that it did not, in my opinion, that it by its own language ceased to exist as of July 31, 1959.

About that same time, if I recall correctly, Mr. Arca indicated concern about the shortness of time and also as to why we were contracting out maintenance work.

I informed Mr. Arca that I regretted the shortness of time but management had only arrived at the decision on the morning of July 27. And I promptly asked for a meeting with the Union representatives so as to give them a copy of the letter that was being sent to them, and to be in a position to discuss with them anything that they might wish to discuss at that time or give them more or additional information.

If the contract, I told Mr. Arca, had an August 31 anniversary date, or even later than that, I would be telling them as of this moment and would have been telling Mr. Stumpf and Mr. Ferber as of Monday night, July 27, what management's decision was.

I endeavored to explain to Mr. Arca or point out to Mr. Arca the problems that were attached and the reasons that we had contracted out the maintenance work. I endeavored, and I say "endeavored" because Mr. Arca was constantly interrupting, endeavored to recall to his mind and other members of the committee the years in the past when I pointed out, with the aid of charts, statistical information, just how expensive and how costly our maintenance work was and how it was creating quite a terrific burden upon the Emeryville plant.

I endeavored to call to Mr. Arca's and the committee's attention—

Q. Well, what did you say? Would you tell us what you said, please?

A. I beg your pardon?

Q. Would you tell us what you said rather than what you endeavored to say?

A. I said this—I am sorry, I am using the word "endeavor" because Mr. Arca was insisting upon shouting me down—I said that in 1958 I had recited to the committee, with the aid of charts, the problems that we were having on the Emeryville properties in the cost of operation, how other unions on that property had joined hands with management in an effort to bring about an economical and efficient operation, how we had not been able to attain that in our discussions with this particular Local.

I showed, with the aid of a chart, the returns that we were having over the past five years, in capital investments.

I informed Mr. Arca, when he repeated about there was such a short time, that if he was concerned about the shortness of time and the Union wished to defer what we were about to undertake, to please so state, give me their reasons for asking for the deferment, and I would give it active consideration.

I finally felt that it was necessary to ask Mr. Arca to withdraw his question as he was not giving me the proper opportunity to point out or give him answers to this question.

He withdrew his question and immediately Mr. Ferber asked almost the identical question that Mr. Arca had at the beginning. I again repeated to Mr. Ferber some of the things that I had told Mr. Arca about the problems we had in the plant as to why we were now contracting out maintenance work, that it would be more economical and more efficient, and this matter had been under consideration for quite a period of time.

Mr. Ferber commented about the shortness of time and I told him that if he and the boys felt that they would like to have this entire matter deferred, to so let me know and give me whatever reasons that they wished, for purposes of more discussions or personal reasons or whatever it was they wished, and we would take it under consideration.

Within a few moments after that, Mr. Arthur Hellender, the assistant to Mr. Robert Ash, said, "Do I understand, Mr. Thumann, that you are suggesting that this contract be extended for, say, a period of sixty days, and during that period of time you will negotiate a contract with 1304?"

I informed Mr. Hellender that that was not the case, that what I had said was that if the Union was concerned about the shortness of time, that July 31 was very close, that all they had to do was to ask for a deferment, give me the reasons and we would give it very active consideration.

No one replied to that matter whatsoever.

Q. Now, Mr. Thumann, did you ask them if they were asking you to negotiate a contract for the contractor with them?

A. Yes. At one period of time, when the Union spokesmen were insisting that something should be done about the proposals that they had submitted, and I was constantly repeating back that I felt it would be entirely pointless as the contract was expiring due to its own language as of July 31,

and that a contractor was coming in, I felt it was necessary to find out if they were endeavoring to have me negotiate an understanding with the contractor.

Q. The answer is yes to my question?

MR. PLANT: The answer is what the witness testified.

• • • • •

Q. (By Mr. Davis) Did you tell them in reply to the previous question that they asked that the contractor, so you had been informed, had contractual relations with all craft unions and therefore the power house and maintenance work would be performed by union men or men who would become members of various unions, as required by the various contracts?

A. Mr. Davis, you started out to read that and you said, "in reply to the previous question." What is the previous question?

Q. You asked them if they were asking you to negotiate a contract for the contractor with them, and the answer was yes.

A. That's right. At that stage of the game somebody inquired as to whether these were union people who were coming in to do the work, and the item you just read was the way I replied to it.

Q. And that is what you told them?

A. That's right.

Q. Now, were you asked at that time if you had contacted the various craft unions yourself?

A. Yes. Mr. Arca asked if I contacted the various craft unions myself, and my reply was that I had not, that I had gone up to the Building Trades Council on Tuesday morning because there I could encounter the various business agents that I had been trying to reach.

You must remember that it was Monday, late morning, when management made up its mind to contract out this maintenance work. I did my best to reach all of the concerned business agents in the afternoon, as I preferred to tell them as against their receiving a letter in the mails. I missed three or four, and as the Building Trades Council meets every Tuesday morning at the Central Labor Council Building I went up there and stood in front of their meeting room and as these various business agents came along I talked to them and told them what we were going to do.

Q. And you told them that Fluor was going to do the maintenance work?

A. Yes, I did.

Q. And you knew that Fluor would not employ any of the Steelworkers, members of the Steelworkers, did you not?

A. I did not know that.

Q. You knew they had contracts with other craft unions?

A. I knew that?

Q. Yes.

A. I had been told that.

Q. Yes. You were informed about that?

A. Yes.

Q. Did you know that the Steelworkers, were you informed that Steelworkers would not be employed?

A. I wasn't informed—

MR. PLANT: Just a moment. I think that counsel is confusing two questions and that tends to confuse the witness. One question is, who Fluor had contractual relations with, and the other question is, who Fluor would hire. They are two separate questions.

TRIAL EXAMINER: I think you ought to clear that up, Mr. Davis.

MR. DAVIS: I asked him if he knew Fluor would not hire any of the Steelworkers.

THE WITNESS: I did not know that.

TRIAL EXAMINER: You mean members of the Steelworkers Union?

MR. DAVIS: Right.

THE WITNESS: As a matter of fact, Mr. Davis, in this July 30 meeting I suggested to the Union that they ask the various people who were in our employ to contact the Fluor Maintenance Company in regard to jobs. I told them I had told the contractor that we have some very capable maintenance people in all crafts, and he told me and I reported to them in that meeting that he would be most happy to interview them and discuss employment with them.

Q. (By Mr. Davis) Did Stumpf offer to arbitrate whether management had the right to contract out the work?

A. He did.

Q. And what was your reply?

A. I replied that this contracting out we felt was our legal right and therefore to arbitrate something that was yours was just senseless and pointless.

Q. And didn't he ask for an extension of thirty days while you arbitrated this?

A. He did not.

Q. Did Stumpf ask you to modify the current labor agreement by adding a section that would state that the maintenance work under the jurisdiction of 1304 would be performed only by 1304 if management entered into an agreement with a contractor to do the maintenance work?

A. That's right, he did. He asked me if we would amend the contract right as of that moment. My reply to him was that that could not be done as we had entered into this contracting of maintenance work for economy and efficiency of operation, and for us to tie the contractor's hands in any fashion, shape or form would be senseless.

Q. Did you sign your name on an attendance sheet, Mr. Thumann?

A. I beg your pardon?

Q. At this July 30 meeting did you and the other member —people present sign your names on an attendance sheet?

A. That's right.

Q. I am showing you a document marked General Counsel's Exhibit No. 9 and I ask you if this is not the attendance sheet which you have just testified to which you and the other members present signed.

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TRIAL EXAMINER: When you say "members," do you mean persons?

MR. DAVIS: Persons present signed.

A. That's right. This red marking down in here was not on it, and I don't recall this line going through, but the subject matter and the bracketing—

Q. (By Mr. Davis) Yes. And is this matter, this statement here, "These representatives of Fibreboard are not in attendance for contract negotiations but to restate their opinions that negotiations for a new contract would be pointless in view of management's intention to contract out power house and maintenance work,"—

A. Correct.

Q. And did you add that in your own handwriting?

A. That is my handwriting.

MR. DAVIS: I am offering General Counsel's Exhibit No. 9 in evidence.

TRIAL EXAMINER: Any objection?

MR. PLANT: No objection, except that the matter in red and the lines, which were added later, should not be determined part of the exhibit.

MR. DAVIS: Yes, Mr. Trial, the matter in red was added subsequently and should be excluded as part of the exhibit, and also the lines which separate the various items.

TRIAL EXAMINER: You mean the pencilled—

MR. DAVIS: The pencilled notation should be in there as part of the exhibit.

TRIAL EXAMINER: You mean the lines—

MR. DAVIS: The line and the bracket should be eliminated.

TRIAL EXAMINER: You mean where it says, "These representatives of Fibreboard are not in attendance . . ." and there are four names there, five names, those five names should be excluded?

MR. DAVIS: No, no. The pencilled notation is in Mr. Thumann's handwriting. That is part of the exhibit. The five names were signed, and all of the names are part of the exhibit. Just the bracket itself and the line and the red ink notation are not part of the exhibit.

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Q. (By Mr. Davis) When did you agree with Fluor to contract out the work to them?

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TRIAL EXAMINER: Was there an agreement entered into?

MR. PLANT: Yes, there was a written agreement executed.

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Q. (By Mr. Davis) Prior to that, prior to the written agreement, there was an oral understanding, was there not?

• • • • •

THE WITNESS: I was informed on Monday morning, July 27, after the series of meetings that I also attended, that we were going to contract out the maintenance work. I had been pressing to get that information as quickly as I could be-

cause I wanted to notify all concerned unions as quickly as I could.

Q. (By Mr. Davis) Therefore you knew about it on July 27?

MR. PLANT: Just a moment. The witness did not testify to that. The question is misleading.

TRIAL EXAMINER: Read the question back, please.

(Question read.)

TRIAL EXAMINER: Did you sit in on any conference about a certain oral agreement about contracting out the work?

THE WITNESS: No.

TRIAL EXAMINER: Well, just tell us what you know of your own knowledge.

THE WITNESS: Well, I was told—

TRIAL EXAMINER: Well, wait a minute, now. Don't tell us what somebody else told you.

THE WITNESS: Well, I know of my own knowledge.

TRIAL EXAMINER: Wait a minute; wait a minute.

Go ahead, Mr. Davis.

MR. DAVIS: All right. You can answer the question of the Trial Examiner.

THE WITNESS: I sat in on meetings beginning the first part of July in which there were discussions amongst management people having to do with the cost of operation and maintenance work in the Emeryville plant as against contracting—the costs, what the contracting costs would be. I sat in on meetings in which the Bechtel Corporation—

TRIAL EXAMINER: Which corporation?

THE WITNESS: Bechtel Corporation—in Mr. Wilson's office—Mr. Wilson is our purchasing agent and, as such, is the man who would handle and does handle all matters in which the Company makes purchases of anything, you might say—with the Bechtel people, Rosendahl, and one meeting in which a representative of the Fluor organization was there.

TRIAL EXAMINER: These meetings took place approximately when?

THE WITNESS: The meetings took place, I would say, with the three companies I mentioned, took place about the middle part, say beginning with the 14th of July, in that neighborhood, on.

TRIAL EXAMINER: The 14th up to somewhere around the 27th of July?

THE WITNESS: Correct.

Q. (By Mr. Davis) When were you informed that Fluor was chosen as the company who would be the contractor?

A. Tuesday morning.

Q. Who informed you?

MR. PLANT: Let's have the date on that.

THE WITNESS: Tuesday morning, July 28th.

Q. (By Mr. Davis) Who informed you?

A. Mr. Wilson.

Q. And when did he say Fluor would take over this work?

A. Midnight, July 31, 1959.

Q. Did you know that there were some Fluor people in the plant prior to July 31?

A. I did not.

TRIAL EXAMINER: You mean working?

MR. DAVIS: That's right.

Q. (By Mr. Davis) And did you know that there was a —that the Steelworkers put up a picket line at 6:00 p.m. on July 31?

A. That's right, they did.

Q. Did you know what the picket sign said?

A. Yes. It said, "Locked Out."

Q. Can you give me the rest of the phraseology on the picket sign?

A. Yes, I think I can. It said, "Locked Out," in large letters, and then in small letters underneath it, it said, substantially, that "Our Contract Has Another Year to Run," and underneath that was the insignia of the Union.

Q. Would you say that this language is correct, "Locked Out," on the first line; on the second line, "Our Contract Has One Year to Run"; and then underneath that "EBUM, Local 1304," and underneath that "U.S. of A., AFL-CIO"?

A. That's right.

Q. And "EBUM" stands for East Bay Union of Machinists?

A. I believe it does.

Q. And "U.S. of A." stands for United Steelworkers of America?

A. I believe it does.

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Q. (By Mr. Davis) Now, in your survey of costs that you

mentioned, would there be any difference in costs with reference to the power house?

A. The costs were all one—

MR. PLANT: Just one moment. I will object to the question as unintelligible. The difference in costs between what and what?

TRIAL EXAMINER: I will sustain the objection.

Q. (By Mr. Davis) Well, you need the same number of men for the power house whether the Steelworkers continued to do that work or whether Fluor or any other contractor did that work, is that correct?

A. Not from my understanding. My understanding is that there would be fewer people assigned to the power house because it would be possible to service the power house from the maintenance people who would be working out in the plant in place of absolutely being stationed in the fire house as they had heretofore.

Q. With reference to the number of firemen and engineers, would there be any less?

A. No, not those two classifications.

Q. So, therefore, that being a 24-hour operation, the same number of firemen and engineers would be needed whether the Steelworkers or Fluor or any other contractor did that work, is that correct?

A. I am not a technician and I can't answer that question in terms of "is that correct."

Q. Well, you just testified that the same number of firemen and engineers would be needed.

TRIAL EXAMINER: Now, wait a minute. Before you contracted this work out, how many employees did you have there, and after you contracted it how many did the contractor have; is that what you mean?

MR. DAVIS: Well, it is another way of getting at it. I have no objection to the question.

A. The best answer I can give is what I gave before, Mr. Davis, and that is this. It is my understanding that it would be possible to take over and do some of the work that is necessary to be done—

TRIAL EXAMINER: Well, we don't care about that, we want to know what really happened.

THE WITNESS: Well, I can't answer that.

TRIAL EXAMINER: Don't you know how many people the contractor had working?

THE WITNESS: No, I do not.

Q. (By Mr. Davis) Now, with reference to the storekeeper, does the contractor still have a storekeeper in the supply house?

A. No, the contractor has not.

Q. Does not?

A. No. The storekeeping work presently is being performed by an hourly worker who works on the dock right adjacent to the storeroom, as I described earlier.

TRIAL EXAMINER: In whose employ is he?

THE WITNESS: In our employ, in Fibreboard's employ.

Q. (By Mr. Davis) And was the storekeeper who was doing the work previously—

A. The storekeeper was working half time in the storeroom and half time as a helper.

Q. And now you have who doing the work?

A. We have an hourly worker who is stationed on the dock right adjacent to the storeroom and one of our supervisors.

Q. Doing this work?

A. That's right. The hourly worker is doing the physical work, bringing in the supplies, putting them in bins, filling the requisitions, things of that sort, and the supervisor is assisting him in doing other types of work, such as sending cards up to the office for a re-order, and things of that sort.

Q. And this was formerly the duties of the storekeeper?

A. That's right.

TRIAL EXAMINER: Now, in whose employ is this supervisor?

THE WITNESS: Fibreboard's.

TRIAL EXAMINER: And the person under the supervisor's jurisdiction, in whose employ is he?

THE WITNESS: The hourly worker?

TRIAL EXAMINER: Yes.

THE WITNESS: Fibreboard's.

Q. (By Mr. Davis) Do you know what union the hourly worker belongs to?

A. Yes.

Q. What union does he belong to?

A. Local 6, ILWU.

Q. Now, subsequently Fibreboard entered into a contract with Fluor regarding the maintenance and power house work, is that correct?

MR. PLANT: Wait just a moment. I will object to the question as unintelligible. Subsequent to when?

MR. DAVIS: Subsequent to July 31 sometime.

TRIAL EXAMINER: Any objection?

A. Well, I was informed on the morning of July 28th by Mr. Ben Wilson, who is our purchasing agent, that the Fluor Maintenance people were the ones that were to do our maintenance and power house work.

Q. (By Mr. Davis) Was there a contract to that effect entered into between Fibreboard and Fluor?

A. That I don't know.

MR. DAVIS: May I have a copy of the contract for the record?

MR. PLANT: I can offer a stipulation on this, if you wish. I will give you a copy of the contract. As to when it was executed, I will offer you the following stipulation, if you wish it. That contract was drafted by the lawyers in consultation with the clients on July 31. A draft of it—the draft was sent to Fluor—

TRIAL EXAMINER: By whom?

MR. PLANT: By Fibreboard or—No. Then on Monday Fibreboard made certain changes in the draft. That was Monday, the 3rd. And on the 4th they signed it, Fibreboard signed it and sent it to Fluor, and Fibreboard got it back from Fluor with Fluor's signature on it on about August 11, I believe. Fibreboard signed it on August 4. The first draft was sent to Fluor, I believe, on July 31.

TRIAL EXAMINER: By whom?

MR. PLANT: By Fibreboard. And the covering letter stated that they were authorized to start work Monday morning in accordance with the tentative understanding which had been reached. I can produce that correspondence for you, Mr. Davis, if you wish it. I don't have it here at the moment.

MR. DAVIS: Well, the point is the contract is dated August 1, 1959.

MR. PLANT: The contract was effective as of August 1, 1959, and before that date—it was signed by Fibreboard on August 4 and was signed by Fluor on some date subsequent to August 4. The exact date I don't know. I know when it was returned to us.

MR. DAVIS: If you say so, Mr. Plant, I have no reason to doubt what you say.

MR. PLANT: The only thing is, Mr. Thumann doesn't know about it. We have another witness that does.

MR. DAVIS: In other words, what you say, I don't doubt what you say, but I do want to call to your attention that the contract says, "IN WITNESS WHEREOF, the parties have executed this agreement as of the 1st day of August, 1959."

MR. PLANT: That is right, as of the 1st day of August.

MR. DAVIS: And I am offering this agreement as General Counsel's Exhibit No. 10.

TRIAL EXAMINER: Any objection?

MR. PLANT: None.

TRIAL EXAMINER: There being no objection, the document is received in evidence, and I will ask the Reporter to kindly mark it as General Counsel's Exhibit No. 10, and a photostat or other copy may be introduced instead of the original.

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MR. DAVIS: Before I ask the witness to resume the stand, I am wondering if Mr. Plant would stipulate with respect to these two documents.

MR. PLANT: I will stipulate to those.

MR. DAVIS: The fact that the document which is General Counsel's Exhibit No. 11 was distributed to all employees in the plant?

MR. PLANT: Yes, it was distributed to all the employees in the plant.

TRIAL EXAMINER: When?

MR. PLANT: On July 30, the date it bears.

MR. DAVIS: And the document which is General Counsel's Exhibit No. 12 was distributed just to the members of the Steelworkers?

MR. PLANT: No, that was distributed to all employees being terminated, which included employees represented by four other unions.

MR. DAVIS: I see. In other words, all employees of the maintenance and power house and the storekeeper?

MR. PLANT: Yes.

THE WITNESS: Yes.

MR. PLANT: Is that stipulation accepted?

MR. DAVIS: I accept it.

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MR. DAVIS: General Counsel's Exhibit No. 12 was distributed on July 31, is that correct?

MR. PLANT: Are you asking for the testimony of the witness or the stipulation from me?

MR. DAVIS: I'm asking you.

MR. PLANT: That was distributed on its date to employees who were being terminated.

TRIAL EXAMINER: And who were terminated?

MR. PLANT: The employees who had been theretofore employed in maintenance and power house work, generally speaking, including employees represented by all of the five unions that I have mentioned as representing maintenance employees.

TRIAL EXAMINER: And who were terminated on July 31, 1959?

MR. PLANT: Right.

MR. DAVIS: Which included all of the employees represented by the Steelworkers?

MR. PLANT: Yes. They were terminated at the end of that day.

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Q. (By Mr. Davis) Now, you testified, Mr. Thumann, that on July 30 you told Mr. Stumpf and other people present that you knew that Fluor had a contract with other craft unions, is that correct?

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A. In answer to a question as to whether the men who were going to do the maintenance work were union men or not, I said yes, they were, because I had been informed that the Fluor Maintenance Company had contracts, negotiated agreements with other unions.

Q. (By Mr. Davis) Yes. And when did you acquire that information?

A. When did I?

Q. Yes.

A. I would say that it was, oh, around the 21st of July, somewheres in that neighborhood, 22nd.

TRIAL EXAMINER: Of this year?

THE WITNESS: Of this year.

Q. (By Mr. Davis) Did you also know that Fluor did not have a contract with Steelworkers?

A. I did not.

Q. Did you learn it subsequently?

MR. PLANT: Subsequent to when?

MR. DAVIS: To July 21.

A. No, I did not.

TRIAL EXAMINER: Do you know it now?

THE WITNESS: I know it now.

Q. (By Mr. Davis) When did you find it out?

A. I found it out when—I would say the earliest would be about the 30th of July when we were holding the meeting in the conference room when I suggested that the employees would contact the Fluor Maintenance Company in regards to work and that I had recommended them to these people, and at that time I don't know whether Mr. Stumpf or Mr. Ferber, but one of the gentlemen commented to the end that it was—that these jobs were Local 1304's jobs and that they did not have any contract with the Fluor Maintenance people.

TRIAL EXAMINER: That is that 1304 did not have a contract?

THE WITNESS: Did not have a contract, you are right.

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TRIAL EXAMINER: Mr. Darwin, have you any questions to ask this witness?

MR. DARWIN: Yes, I do.

TRIAL EXAMINER: You may proceed, sir.

Q. (By Mr. Darwin) Has Mr. Robert Ash ever negotiated in behalf of Local 1304 with you and your Company?

MR. PLANT: Objected to as calling for a conclusion of the witness.

TRIAL EXAMINER: I beg your pardon?

MR. PLANT: Objected to as calling for a conclusion of the witness. The witness has already testified as to a meeting which Mr. Ash attended in which he made a certain proposal. Now, whether or not you want to characterize that as negotiating on behalf of 1304, I don't know. It is a characterization and calls for a conclusion of the witness.

TRIAL EXAMINER: I'll sustain the objection.

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Q. (By Mr. Darwin) I think you did say that Mr. Ash said that members of Local 1304 should be put back to work first before any further discussions were had. Do you remember that testimony?

A. Mr. Ash said at the outset of the meeting in Mayor Lacoste's office—Is that what you are referring to?

Q. That's right.

A. —at the outset of the meeting that he had asked for the meeting to be held and that he had a proposal to make, and the proposal was, put the 1304 boys back to work, the picket line will be removed, and then the entire issue can be resolved through the NLRB or the courts.

Q. Did you also hear Mr. Ash say to you and to the Mayor that that was the position of the Regional Office of the National Labor Relations Board; did he say that?

A. The publicity director of the Steelworkers Union, after the meeting had been under way for, I would say, a good half hour, said that an order had been issued by the Regional Board that we were to put all 1304 people back to work immediately and sit down and negotiate.

TRIAL EXAMINER: When you say "Regional Board," what do you mean?

THE WITNESS: The Tenth Region.

MR. DAVIS: Twentieth Region.

THE WITNESS: Or whatever region this is.

TRIAL EXAMINER: You mean the Twentieth Region of the National Labor Relations Board?

THE WITNESS: Yes, I assume that is what he meant.

Q. (By Mr. Darwin) And following that did Mayor Lacoste pick up the phone and call to me; you know that, do you?

A. Yes. Shortly thereafter the Mayor picked up the phone and talked to you.

Q. And I don't know whether you heard the conversation between the Mayor and me, but did the Mayor then report to you that I had said that it was the position of the Labor Board here that these men be put back and that it was not in an official written order; did he tell you that?

A. No, he did not.

Q. Did you know that?

A. I asked to speak with you so as to find out what you were talking about, and you refused to talk with me over the telephone.

TRIAL EXAMINER: You mean someone told you that Mr. Darwin refused to talk to you?

THE WITNESS: That's right.

TRIAL EXAMINER: Who was that person?

THE WITNESS: That was the publicity director of the Steelworkers Union. In fact, he quoted Mr. Darwin as saying that I should talk to my own counsel.

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Q. Was the purpose of that meeting called by the Mayor and Sergeant Steeves of the Emeryville Police to try to persuade you to get the picket line off?

A. No. The Mayor phoned me the day before the meeting and he said that he had been requested by Mr. Ash to hold a meeting in his office for the purpose of seeing what we could do about the problem we had there in Emeryville.

Q. Mr. Stumpf wasn't there?

A. No.

Q. Mr. Ferber, the business manager of Local 1304, was not there?

A. They were not in the office.

Q. The five or six employees of Fibreboard that generally constitute the negotiating team, along with these two I have just mentioned, were not there, is that correct?

A. That's right.

TRIAL EXAMINER: You mean were not there at the August 21 meeting?

MR. DARWIN: Meeting, that is correct.

TRIAL EXAMINER: Who was there, Ash and this—

THE WITNESS: Publicity director of the Steelworkers Union and Mr. Robert Smith, who was president of Local 1304.

TRIAL EXAMINER: And they are the ones that represented the Union?

THE WITNESS: That's right.

TRIAL EXAMINER: Or unions.

Q. (By Mr. Darwin) Was Mr. Robert Smith an employee of Fibreboard?

A. No.

Q. Do you know it of your own knowledge that he has not been an employee of Fibreboard for about thirteen years?

A. I don't know.

Q. You have been with the Company how long, sir?

A. Since 1949.

Q. Has Robert Smith been an employee since 1949 of the Respondent?

A. Not to my knowledge. I don't know all the employees.

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CROSS-EXAMINATION

Q. (By Mr. Plant) Mr. Thumann, would you give us a brief history of Fibreboard Paper Products Corporation's corporate existence? By what names was it previously known?

A. It was known as the Paraffin Companies, and then later changed its name to Pabco Products, Inc., and then later it changed its name to Fibreboard Paper Products Corporation, after it took over the Fibreboard Products, Inc.

Q. Now, you have described the operations of the plant at Emeryville. Does the corporation have plants elsewhere?

A. They have.

Q. A large number of those plants were acquired, were they, in Fibreboard's merger, the Fibreboard-Pabco merger?

A. That's right.

Q. And when did that merger take place?

A. In 1956, as I recall.

Q. Will you state what other plants the corporation has besides the one in Emeryville?

A. It has a plant up in Port Angeles, Washington; Sumner, Washington; two plants in Portland, Oregon; a plant in Stockton; two plants in—really three plants in the Antioch area of Contra Costa County, California; a plant in San Francisco; a plant in Redwood City, California; a plant in Newark, Alameda County, California; two plants in Southgate, California; one plant in Vernon, California; one plant in Wilmington, California; a plant in Denver, Colorado; a plant in Florence, Colorado; gypsum quarries at Coaldale, Colorado; and a plant in Henderson, Nevada. It has its head offices here in San Francisco.

Q. Now, are you charged with responsibility for the industrial relations of all of these plants that you have mentioned?

A. Of those plants plus the subsidiaries.

Q. And are there subsidiaries?

A. There are.

TRIAL EXAMINER: Well, these plants that you just enumerated, are they wholly owned and operated by Fibreboard or are they subsidiaries?

THE WITNESS: No, they are owned and operated by Fibreboard.

TRIAL EXAMINER: And besides these plants, Fibreboard has subsidiaries?

THE WITNESS: Subsidiaries, that is right.

TRIAL EXAMINER: Are they wholly owned or otherwise?

THE WITNESS: They are wholly owned.

Q. (By Mr. Plant) Now, will you state whether or not there are union contracts at all of these plants that you have mentioned?

A. That's right.

Q. That is, that there are?

A. Say that again?

Q. Your answer is that there are union contracts at all of these plants?

A. There are union contracts at all of these plants.

Q. Now, turning your attention to the Emeryville plant, I believe you have enumerated the number of production employees. Are those employees represented by unions?

A. They are.

Q. What unions represent them?

A. There is the Oilworkers Union, Printing Specialties Union, Pulp and Sulfide Workers Union, Local 6, ILWU, Paintmakers Union, Sheet Metal Workers Union, Teamsters Union.

Q. How about the Chemists?

A. And the Associated Chemists.

Q. Now, does Fibreboard have collective bargaining contracts with all of those unions?

A. Right.

Q. Prior to July 31 of this year, what unions were involved in your maintenance and power house setup?

A. There was Local 1304, East Bay Union of Machinists, Steamfitters Union, the Ironworkers Union, the Carpenters Union, Electricians Union.

Q. And did you have collective bargaining contracts with all of those unions?

A. We did.

Q. Were those contractual relationships that you have mentioned with these various unions of recent origin or had you had contracts for some time?

A. For some time.

Q. For some time. Do you mean years?

A. Yes, that's right, approximately 1937.

Q. How long had Fibreboard had contractual relationships with the Machinists Union, Local 1304?

A. Approximately 1937.

Q. Now, you have mentioned that consideration had been given for some time to contracting out the maintenance work. Why was that, why did the Company give consideration to that?

A. The cost of doing our own maintenance work was excessive when it was compared with the cost of maintenance work in our various plants, as well as in examining the costs of our competitors.

Q. Had you in past years discussed with any of the unions representing the maintenance employees the facts that you have just mentioned?

A. I had discussed it with all of them.

Q. Did you, for example, discuss it with the Machinists Union, Local 1304, in 1937?

A. In 1937, I was not there.

Q. Pardon me. 1957. I am twenty years off.

A. I did.

Q. By the way, when was your first meeting, your first contract negotiating meeting with Local 1304 in 1957?

A. July 23.

Q. And you discussed the matter with them in 1958?

A. I did.

Q. And when was your first meeting that year?

A. July 10.

Q. Did you exhibit to these various unions representing maintenance employees charts showing your cost situation?

A. I did. I exhibited in 1957 as well as in prior years charts that were made up showing the relative worth of the major cost items of the contract that 1304 had with the Emeryville plant, and the same cost items as 1304 had with other contracts that it had in that area. I showed to them the costs, as far as Machinists' rates of pay were in our competitors' plants.

Q. Did you go into similar figures with the other unions representing maintenance employees?

A. Yes.

Q. During those years did you discuss with the unions representing production and maintenance employees at the Emeryville plant the possibility that economics might force a closure of the plant or of some part thereof?

A. I did.

Q. Was that a matter which was mentioned only once or was it a matter which you discussed with them frequently?

A. Beginning with approximately 1956, '57, and certainly in full force in 1958, I pointed out that the cost problem of the Emeryville plant was a very heavy one and that management was doing everything it possibly could to bring about an economical operation and restore the plant properties into a profitable position.

In 1958 I pointed out to the Union that I was then working with other unions to bring about changes in their contracts, changes in procedures and other things that would assist in bringing down the cost operation of the entire plant.

Q. Did Local 1304 in either 1957 or 1958, after you pointed these things out to them, make any proposition calculated to help the situation?

A. They did not.

MR. DARWIN: I object to that as calling for a conclusion of the witness. He has been leading the witness to a great extent, and I want to interrupt at this time.

TRIAL EXAMINER: I will sustain the objection.

Will you reframe your question, Mr. Plant, please?

Q. (By Mr. Plant) Were there demands for wage increases or other—or increased benefits in 1957 by the Machinists Union?

A. There was.

Q. Did the negotiations end up with those demands or a part thereof being acceded to by Fibreboard?

A. Yes.

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Q. (By Mr. Plant) And what was the fact in that connection in 1958?

A. The same thing.

Q. When, to the best of your knowledge, did Fibreboard first go into the possibility, consider the possibility of contracting out this work?

A. In 1956.

Q. Will you state what occurred at that time; what was done?

A. Yes. A study had been made which demonstrated that contracting out maintenance work should be given serious consideration, but we were in the process of merging, reorganizing, allocating, if I can put it this way, responsibility amongst our various executives, and the problems attendant to that were so tremendous that it was decided that we should forego making an effort to contract out the maintenance work.

Q. At that time?

A. At that time.

Q. Now, did you at any time during the month of June of this year speak about the matter to a Mr. Burgess?

A. I did.

Q. Who is Mr. Burgess?

A. Mr. Burgess is vice-president in charge of manufacturing.

Q. How long has he held that position?

A. He was given the responsibility of that work about January 1 of this year. He was made a vice-president in charge of manufacturing in April.

Q. And about when was it that you spoke to him about the matter of contracts?

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A. In the latter part of June.

Q. (By Mr. Plant) Will you state the substance of your conversation with Mr. Burgess, that is, the substance of what you said and the substance of what he said?

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A. (Continuing) I asked Mr. Burgess as to what management's intentions were with regard to maintenance work in the plant as I needed to know so I would know what to do in regard to my relationships with the various craft unions in the Emeryville plant.

Q. (By Mr. Plant) What was his reply?

A. He asked me to enlarge upon my question. I did, I informed him as to the background of why I asked him that question and he told me that he would certainly give it immediate consideration and would let me know within a reasonable length of time.

Q. Now, did you thereafter participate in a review of the matter of the possibility of contracting out the work with Mr. Burgess or with others?

A. My participation was to the extent of being kept informed. I attended meetings of the various staff people at headquarters who were charged with the responsibility of arriving at a determination to develop how the work would be handled. I sat in on meetings in which—which were held with the Bechtel Corporation, with the Rosendahl Corporation, and with the Fluor Corporation, and also in top management meet-

ings where the determinations were being made after all this information had been collected.

Q. In connection with that review of the matter, do you know if any study was made of your own maintenance costs?

A. Yes.

Q. Now, were you present at the meeting at which the decision was made that the work should be contracted out?

A. I was.

Q. And when did that meeting take place?

A. The morning of July 27, Monday.

Q. Now, at that time had there been any narrowing down of the number of contractors that were under consideration?

A. Yes, there had been.

Q. Who were still under consideration at that time?

A. The Rosendahl and the Fluor Maintenance Corporation.

Q. And when did you learn that the Fluor Corporation had been definitely decided upon?

A. Tuesday morning, July 28.

Q. Now, you have testified in substance that you told Mr. Ferber sometime in late June that you would call him sometime during the week of July 12 regarding a meeting, and you have testified that you did not call him.

A. That's right.

Q. Will you state why you did not call him?

A. Yes. I did not call him as I was endeavoring to bring about a conclusion of management as to what it intended to do about maintenance work, whether to contract it out or not.

Q. How would that affect the question of your calling him about a meeting?

A. To have called him to set up a meeting when I did not know what chart or what course to follow I felt would be a wrong thing to do. I felt that I should be in a position, when I established a meeting with Mr. Ferber and Mr. Stumpf and the committee, to discuss either modification of the contract or to announce that we were going to contract out maintenance work.

Q. Now, you have testified regarding a meeting with Mr. Ferber and Mr. Stumpf on July 27 at Pland's Restaurant.

A. Right.

Q. And you have also testified to telling them about what you proposed to do with respect to termination allowances.

A. I did.

Q. Did either of them make any comment, suggestion or proposal upon the subject of termination allowances?

A. No, they did not.

Q. At that meeting did either of them make any question of any kind or proposal of any kind regarding your instructing the contractor as to who the contractor might hire?

A. Yes. They asked me to tell the contractor that 1304 had been doing the work and that 1304 people should do the work.

My reply to that was that I could not do it as we had entered into a contract with the contractor, whose hands we felt we should not tie and who we would hold responsible for performance of the work.

Q. Now, was it at that time that you said you had entered into a contract with a contractor?

A. That we were entering into a contract with the contractor. We had not selected—I mentioned the fact that there were two that were being given consideration.

Q. Now, calling your attention to the meeting of July 30 with the representatives of the Union, during that meeting did you make any mention of the question of termination pay?

A. I did.

Q. And what did you say about it?

A. I said that termination pay of that, up and above what the contract required, to be paid to people would be made, that we would give pro rata vacation, we would give termination pay that would be based upon, from five to ten years, four weeks as a total; from ten to fifteen years, five weeks as a total; from fifteen to twenty years, six weeks as a total; and over twenty years, seven weeks as a total. And also each employee would be given what we called, I believe, a personal statement form that would show on it just exactly what each man was to receive in terms of prorated vacation, in terms of their severance pay, and it would also list what he would have in terms of pension rights, whether he would have normal retirement, vested interest or optional early retirement.

Q. Now, did any of the Union people present at that meeting or make any comment or proposal with respect to the question of termination allowances?

A. They did not.

Q. At the conclusion of that meeting of July 30, was any statement made by any of the people there about willingness to meet further upon request?

A. Yes. Mr. Stumpf announced that the Union was ready to meet with management again at any time that management desired a meeting.

I announced that management would be most happy to meet at any time for any meeting to answer any questions or to discuss any matter the Union wished to discuss.

Q. Now, did you receive thereafter any request by the Union for any further meeting?

A. Nothing from Local 1304.

Q. The only request that you received was the one transmitted to you through the Mayor, is that right?

A. Right.

Q. I think that you have mentioned a proposal made, first, that you would instruct the contractor to employ 1304 people and then later in the meeting of July 30 a proposal to the effect that your contract be amended to prohibit contracting, except to contractors employing 1304 people, and you mentioned a proposal made regarding arbitration, and you have mentioned a proposal that the Company renew the contract with 1304 with the modifications which have been proposed. Did 1304 or any of these union people at any time make any proposals other than those that you have mentioned?

A. No, they did not.

TRIAL EXAMINER: Did they indicate that they would withdraw the proposals?

THE WITNESS: Would you say that again, sir?

TRIAL EXAMINER: Did they indicate to you that they would withdraw the proposals?

THE WITNESS: That they would withdraw the proposals?

TRIAL EXAMINER: Yes.

THE WITNESS: No, they did not.

Q. (By Mr. Plant) Did the Union ever ask that you defer the matter of contracting out the work to give the Union more time to consider the problem?

A. They did not.

TRIAL EXAMINER: What was that last question?

(Question read.)

TRIAL EXAMINER: Did they ask to arbitrate it?

THE WITNESS: Yes, they did, they asked to arbitrate it.

TRIAL EXAMINER: And what was to be done while the arbitration proceedings were going on, did they indicate?

THE WITNESS: Not to my knowledge. The question was put to me, would we be willing to arbitrate our right to contract out maintenance work.

TRIAL EXAMINER: In the meantime let their members work for your Company?

THE WITNESS: Nothing was said along those lines. I was asked the question and I gave that answer to that question.

Q. (By Mr. Plant) In other words, in making the proposal regarding arbitration, the Union representatives did not specify who would do the work in the meantime?

A. No, that's right.

Q. Well, it was understood, wasn't it, that you weren't to sublet this work until the arbitration proceedings were over?

A. I gave no thought as to what would take place there. I tried to answer the question about arbitrating our right to contract out maintenance work, and I replied that we would not arbitrate anything that was our legal right to do.

TRIAL EXAMINER: Yes. But it follows that if, when they asked you to arbitrate it, they meant before you did contract it out that you would go through the arbitration proceedings, isn't that right?

THE WITNESS: Well—

TRIAL EXAMINER: Well, they are not going to let somebody—

THE WITNESS: Do you want me to give an assumption or do you want me to—

TRIAL EXAMINER: Well, doesn't it stand to reason, from your experience in this labor relations field, that when they said let's arbitrate it they meant let the thing stand?

THE WITNESS: If they would arbitrate it under the grievance procedure, you would be right in what you assumed.

TRIAL EXAMINER: And they meant to let things stand until the arbitration proceedings were over—

THE WITNESS: Well, very frankly, if that was something that we would be willing or could arbitrate I would have, of necessity, had to find out about the contract that was to become effective as of July 31 and a few other things.

TRIAL EXAMINER: Well, there is no use going through arbitration proceedings if the work was all completed by the contractor.

THE WITNESS: Your assumption, I think, is right.

Q. (By Mr. Plant) Now, let's discuss briefly this matter of the storekeeper. Was that a fulltime job prior to July 31?

A. It was not.

Q. What did the man who did that work, what else did he do?

A. He worked as a helper.

Q. And about how much of his time did he spend as a helper and how much of his time did he—

A. I understand it was about evenly divided.

TRIAL EXAMINER: Did his rate of pay change at any time?

THE WITNESS: No, it did not.

Q. (By Mr. Plant) Now, did you also have in the area of that storeroom, or whatever you call it, another employee who handled incoming shipments?

A. Yes. We had an hourly worker who received the incoming shipments and turned them over to the storekeeper.

Q. And that hourly worker was in the unit represented by the ILWU, is that right?

A. You are right.

Q. Now, did that receiving clerk or whatever you may call him have enough work to keep him busy?

A. No.

Q. Now, since July 31 it is this receiving clerk that you have mentioned who has done part of the work that was formerly done by the storekeeper, is that correct?

A. That is correct.

Q. And the other part, the part of handing in orders to the office, has been done by a supervisor?

A. Right.

Q. You have not added any employee to do the storekeeping work?

A. We have not.

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REDIRECT EXAMINATION

Q. (By Mr. Davis) You have testified, Mr. Thumann, that in previous years, in 1957 and 1958, you talked about excessive costs and you showed the Union representatives these charts, is that correct?

A. Right.

Q. That was during a negotiating meeting, wasn't it?

A. During negotiations, yes.

Q. That was for the purpose of trying to keep their demands down, wasn't it?

A. It was for the purpose of trying to make certain that our contract would not become too excessive.

Q. That's right.

A. And that we could adjust things.

Q. So therefore you were trying to keep their demands down, isn't that so, tried to arrive at a lower wage scale than they were asking for?

A. Trying to work out a wage scale that management could live with.

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Q. Now, in the July 30 meeting, isn't it a fact that Mr. Hellender asked you if you would be willing to extend the termination date for, say, two months and during that period negotiate an agreement with Local 1304 for the coming year?

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A. Mr. Hellender asked me if I had been suggesting a contract extension for, say, about sixty days and during that period of time to negotiate a new agreement with 1304.

Q. (By Mr. Davis) He didn't ask you if you would be willing to make such—

A. No. He asked me if I was saying that.

Q. Well, do you remember making a memorandum concerning additional facts concerning the East Bay Union of Machinists? Do you remember this?

I show you a document and ask you if that is not the memorandum you prepared or that was prepared under your direction.

A. Yes.

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MR. DAVIS: The memorandum says that within a few minutes after these comments to Ferber, Arthur Hellender, an assistant to Bob Ash, secretary of the Labor Council of Alameda County, asked me if I was saying that I would be willing to extend the termination date for, say, two months and during that period negotiate an agreement with Local 1304 for the coming year.

Q. (By Mr. Davis) Is that a correct statement?

A. That's right.

Q. Okay. Now, during your August 21 meeting in the Mayor's office, wasn't Bob Ash's proposal that the men go back to work and that you arbitrate or have the courts decide these questions?

A. Mr. Ash's proposal was that 1304 men be restored to their jobs, the picket line would be removed, and then the matter thus could be resolved by the NLRB or the court.

Q. Okay. Did you offer at any time to negotiate with the Union the termination pay, vacation pay?

A. I announced first on the evening of July 27 what management was prepared to do up and above the contractual requirements.

In the meeting of July 30 I again made the same announcement that management was willing to do this up and above the contractual requirements of the contract.

Q. Did you ask them for any proposals on this—

A. I did not.

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TRIAL EXAMINER: Did you say that you would meet with them?

THE WITNESS: I said I would meet with them for any discussion or questions or anything else that they wished to have.

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Q. (By Mr. Davis) Did you say that you would meet with them to discuss these questions?

A. I said I would meet with them to discuss anything that they wished to discuss.

Q. And you say you said that on July 27th, you said you told them that on July 27th?

A. On the night of July 27 I talked with Mr. Stumpf and Mr. Ferber and I told those men about what we were going to do in terms of termination pay. In the course of that discussion Mr. Ferber asked for a meeting to be held. Tentatively we set Thursday, July 30, as the date on which we would hold the meeting.

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REDIRECT EXAMINATION (Resumed)

Q. (By Mr. Darwin) Now, Mr. Thumann, these charts of economic data which you say were exhibited from year to

year to Local 1304 in negotiating sessions were similar types of charts that you had exhibited in your negotiations with other unions, isn't that correct?

A. Similar in type, but not, of course, the same subject matter.

Q. Very well. And some of the unions in your negotiation sessions from year to year where you had charts, economic charts, and whatever other data, included such unions as the Printing Specialties Union, isn't that correct?

A. No. The Printing Specialties, as I recall, in former years, would be a case of where I would discuss the relative costs—during negotiations I am talking about now—I would discuss the cost values with the union and make whatever comparisons were fitting at that particular time.

Q. And you might use charts and other—

A. Cost-of-living data, yes, whatever was considered suitable.

Q. And without burdening you any further, that would be generally true as to all other unions with whom you had to meet from time to time?

A. That's right.

MR. DARWIN: That's all.

TRIAL EXAMINER: Any questions, Mr. Davis?

MR. DAVIS: Yes, I have just one question.

Q. (By Mr. Davis) I show you a document which has been marked General Counsel's Exhibit No. 13 and ask you what it is.

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A. This is known as a "Personal Statement for Mr.——" and then the name of the employee was filled in, and this was handed to him on July 31, 1959.

Q. I see. And those were given to those employees who were discharged on that day?

A. Who were terminated on that day.

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Q. (By Mr. Davis) I show you General Counsel's Exhibit No. 11, and it has been stipulated that this was passed out to all the Emeryville employees on July 30, and ask you in what manner it was distributed to all the employees.

A. It was distributed to the various department and supervisory employees.

Q. Exactly how?

A. I can't give you the mechanics of it. I know what the procedure was.

Q. What time of the day, in the morning or afternoon?

A. That I can't answer.

Q. But sometime during the day when the people reported for work?

A. It was sometime during the day, that's right.

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TRIAL EXAMINER: You are excused. Thank you very kindly.

(Witness excused.)

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CARL JONES

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: What is your name, sir?

THE WITNESS: Carl Jones.

TRIAL EXAMINER: Where do you live, Mr. Jones?

THE WITNESS: I live in San Bruno, 217 Santo Domingo Avenue.

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DIRECT EXAMINATION

Q. (By Mr. McFetridge) Please state your occupation.

A. Staff representative with the International Union of United Steelworkers.

Q. As the staff representative were you called to attend any meetings during the month of August concerning the strike at Fibreboard Corporation?

A. I wasn't called to meet with the Company, I was called to a meeting by Mr. Angelo and asked to represent the United Steelworkers and myself at a meeting with the Mayor of Emeryville.

Q. On what date was that, Mr. Jones?

A. On the 21st of August.

TRIAL EXAMINER: And who is Mr. Angelo?

THE WITNESS: Mr. Angelo is the sub-district director assigned to this area.

TRIAL EXAMINER: Is he a Steelworker?

THE WITNESS: Yes.

TRIAL EXAMINER: What is his first name?

THE WITNESS: Joseph.

Q. (By Mr. McFetridge) Would Mr. Angelo be considered your boss?

A. Yes.

Q. And who else was present at this meeting?

A. Well, there were several people that I didn't know. There was Bob Ash, representing the Central Labor Council, and Bob Smith came into the meeting from the United Steelworkers, 1304, and there were representatives of the Company, I don't recall the names, and Mr. Thumann was there.

Q. I should have asked you this question before. As the staff representative have you negotiated contracts with various companies in the past?

A. Yes. I negotiate contracts with companies that I am assigned to negotiate with. In this particular instance I was instructed not to negotiate. There was no negotiation, it was merely a public relations matter with the Mayor. The Mayor had requested the meeting and we attended for the purpose of explaining to him what had happened.

TRIAL EXAMINER: You said you got instructions. From whom?

THE WITNESS: Mr. Angelo, that we were only there for the purpose of seeing that our information got over to the Mayor, but not for the purposes of negotiations.

Q. (By Mr. McFetridge) And what was your information?

A. Our information in this particular instance was that the Board was recommending that they return the Steelworkers to their jobs and negotiate with the Union.

* * * * *

Q. (By Mr. McFetridge) What did you tell the other persons present at this meeting?

A. Well, I opened for the Steelworkers, stating that I was there representing the Steelworkers, not for the purpose of negotiations but merely in the public interest at the request of a representative of the City of Emeryville, a public official of the City of Emeryville; that it was my understanding that the Board had recommended that the Steelworkers be returned to their jobs and that the Pabco Company negotiate with them, that that was all we were interested in, they return the men

to the job, and if they wanted to negotiate they would negotiate with the proper authorities.

Q. Did you say that you were directed to say this by Mr. Angelo, your superior?

A. Yes.

Q. Had you ever yourself been part of a negotiating committee in negotiating a contract with Fibreboard?

A. I had not.

Q. You have not. Did anything else take place at the meeting in regard to conversations that you had with the representatives who were present?

A. Mr. Thumann denied that the Board was making such a recommendation and I, just before the conclusion of the meeting, phoned the attorney for the Union, Mr. Darwin, and asked him to repeat to the Mayor, if he would, and he agreed that he would; I asked him if he would tell Mr. Thumann, and he said that he would not, that Mr. Thumann had attorneys and he wasn't supposed to instruct Mr. Thumann, and that it was up to his attorneys to instruct him at the time they thought proper to inform him, if they had not already informed him.

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LLOYD H. FERBER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: What is your name, sir?

THE WITNESS: Lloyd H. Ferber.

TRIAL EXAMINER: Where do you live, sir?

THE WITNESS: 3200 Rheem Avenue, Richmond, California.

TRIAL EXAMINER: You may be seated, sir.

The General Counsel may proceed with the examination of this witness, who has been duly sworn.

DIRECT EXAMINATION

Q. (By Mr. Davis) Mr. Ferber, what is your position?

A. I am the Business Representative of the East Bay Union of Machinists, Local 1304, United Steelworkers of America.

Q. And how long have you held that position?

A. Since July of 1952.

Q. And since that time have you been one of the parties that has been engaged in the negotiations with Pabco or Fibreboard?

A. Since 1953, yes.

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Q. When did you next have contact with Mr. Thumann?

A. I next had contact with Mr. Thumann on July 27. Mr. Stumpf, Mr. Arca and myself were at Gulf Controls to negotiate—in negotiations, and Mr. Stumpf proceeded to call from his office to Mr. Thumann.

We concluded negotiations at approximately 5:15 to 5:30 and took Mr. Arca back to the Union Hall to pick up his car. And I had been feeling rather ill all day, so I asked Mr. Stumpf if he would drive me over to Permanente Hospital. And on the way to Permanente Mr. Stumpf informed me that he had talked to Mr. Thumann on the phone and that Mr. Thumann would like to meet us at Pland's, that he had something very important to tell us. So I decided that possibly we should go over, even though I wasn't feeling too well. And we went over to Pland's, arrived there at approximately a little after 6:00, possibly, 6:15, and parked our car, went in the door of Pland's Restaurant and didn't see Mr. Thumann. We came back outside. And when I next saw Mr. Thumann he had come from the inside of the restaurant, and I saw him in front of Pland's Restaurant.

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Q. And will you tell us what happened there and what was said?

A. Well, after some general exchange we went into the cocktail—restaurant part of the cocktail—diningroom part of the restaurant and took a table adjacent to the bar. And there was a drink ordered. And after it had been delivered, Mr. Thumann stated that, "I have some news that I think will shock you." And he proceeded to tell us that Pabco for some time had been studying the possibility of contracting out maintenance work and on only that day arrived at a decision to do so, and that on July 31 Pabco would have no 1304 employees.

I asked at that time, "Does this include the power house?" And he answered, "Yes, everyone." And he then gave us a copy of a letter dated July 27, which I believe is in evidence.

After reading the letter, Mr. Stumpf remarked, "Rudy, we have a contract in effect with the Pabco Company that has been established over many years of negotiations and our people have job rights with the Pabco plant that have been established over many years of service, and they have a right to expect us to protect those rights." In fact, he said we would be miserable representatives if we didn't protect those rights.

Mr. Thumann stated that they had contacted their legal advisers and their legal advisers had told them that they were within their legal rights to contract out this work for economic reasons.

Mr. Stumpf then said, "Rudy, you are not eliminating any jobs, you are eliminating our people."

And Mr. Thumann answered, "Well, don't blame me, boys. The decision was made by top management as of today after careful study and we are putting it into effect."

I then asked Mr. Thumann if he knew who the contractor would be, and he said, "I do not at this time. There are a couple companies in the picture and as soon as I know I will call you and let you know for sure."

And I asked him to do that. And there were some more discussion on our job rights of our people. I asked Mr. Thumann for a meeting with our full committee so our people could be informed, stating that I thought if this were to hit them cold without a meeting they would possibly walk off the job.

Mr. Thumann said, "Why would they walk off the job? They would jeopardize any of their benefits and also lay theirselves open to injunctions and law suits," etcetera.

Mr. Stumpf then stated that these people had job rights and we should have a meeting and sit down and negotiate.

Mr. Thumann replied that they had consulted their legal advisers and they were informed they were within their legal rights and they were going to go ahead with this proposal and contract out the work.

I then informed him that he would get a letter from the Central Labor Council that the Union was seeking strike sanction and, of course, his reply was, "For what? We will have no 1304 employees as of July 31."

Mr. Stumpf said, "Rudy, we are going to do everything in our power to protect the job rights of our people." And with that and a few general things, the meeting was broke up.

Q. Have you told us everything you remember of what was said at that meeting?

A. Yes. I recall that Mr. Thumann at one point asked me what I was going to do. I said, "I don't know at this time. I am so shocked I don't know what we are going to do."

And then Mr. Thumann suggested we contact our legal advisers, find out what our legal rights were.

Q. Do you remember anything else?

A. Only to the extent that when we suggested negotiations, Mr. Thumann's answer was that to negotiate would be pointless as we would have no 1304 members working for Pabco subsequent to July 31.

Q. Anything else?

A. Yes. Mr. Stumpf asked Mr. Thumann what was going to happen to these people and their fringe benefits, such as death benefits, sick leave, termination pay, and one thing and another, and Mr. Thumann's answer was that, "I am working out a system of termination pay and prorated vacation and you will find that I will be quite generous."

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Q. Okay. Now, did you talk with Mr. Thumann the next day?

A. On the telephone.

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TRIAL EXAMINER: All right. Tell us about your conversation.

THE WITNESS: Mr. Thumann told me that he had talked to Mr. Viat and had informed Mr. Viat that there was no point in having a meeting.

He then informed me that management had determined for sure that it was the Fluor Maintenance Company that would get the contract.

TRIAL EXAMINER: That brought up what you wanted to bring out in the record?

MR. DAVIS: That is right.

Q. (By Mr. Davis) Continue with the conversation with Mr. Thumann.

A. And at that point I said, "Rudy, if you lock our people out, we are going to tangle."

He asked me if I had contacted our legal advisers, and I said that I had.

He asked me what he had said and I told him that in his opinion we still had a contract with Pabco and a right to bargain for our people.

And he asked, "Even no matter who has the contract?"

And I said, "Yes, even though someone else has the contract, we have a right to bargain for our people's jobs."

* * * * * *

Q. Now, did you meet on Thursday afternoon?

A. Yes.

Q. And that was Thursday afternoon, July 30?

A. Yes, sir.

Q. And what time did the meeting start?

A. The Union Committee went into the conference room about five minutes after 2:00 o'clock, and I would say it was about ten minutes later when the management committee went into the conference room.

Q. That was the conference room at the Emeryville plant?

A. The Emeryville plant of the Pabco Company.

Q. How many people were present?

A. There was eight on the Union committee, plus one observer, and Mr. Arthur Hellender from the Central Labor Council of Alameda County, and there were five people on management's committee.

Q. And how did the meeting commence; what was said, initially?

A. Well, as we came into the— as Mr. Thumann and his committee came into the conference room, after the customary greetings, Mr. Thumann presented Mr. Stumpf and myself with the letter in answer to the Union's letter of July 29.

* * * * * *

Q. Yes. And 8 is the letter of July 30. Is that the letter that was handed to you?

A. Yes. Here it is, a copy of the letter.

Q. Of the letter that was handed to you at this meeting?

A. Yes, sir.

Q. And then what happened?

A. Well, Mr. Stumpf stated, "We are here to negotiate an agreement for these people."

And Mr. Thumann stated that his position, or the Company's position, rather, was clearly contained in the communi-

cation that he had handed us and that it would be pointless to attempt to negotiate a new agreement or any modifications of the agreement.

There was much general discussion and questions asked. For instance, the discussion centered around the shortness of notice, and questions were asked by Mr. Arca as to when Pabco had started contemplating the contracting out of maintenance work, and Mr. Thumann answered that for some time they had been studying it, and Mr. Arca asked why the Company waited for such a late date to notify the Union, and Mr. Thumann's answer was that, of course, they didn't broach these things until they knew for sure where the Company was going.

And during the exchange Mr. Thumann stated that he would not answer Mr. Arca because he was being interrupted and suggested that I ask the question, which I did.

Q. What was the question?

A. "Why did you wait for so long before you notified the Union?"

And he gave me much the same answer as I just stated that he gave Mr. Arca, that they didn't know until Monday where they were going, and that he had notified Mr. Stumpf and myself at that time.

Q. Continue.

A. There was other general discussion. Mr. Thumann at one point stated that if the shortness of notice perturbed the Union, if they were talking about an extension, it might be a different matter.

Mr. Stumpf proposed an extension of thirty days.

Q. What did Mr. Stumpf say?

A. Mr. Stumpf said, "All right, Rudy, let's extend the contract thirty days and arbitrate the issue or let the National Labor Relations Board decide what our rights are."

Mr. Thumann stated that he didn't see how you arbitrated anyone's legal position.

Q. Now, I show you General Counsel's Exhibit 9, and does your signature appear upon this exhibit?

A. Yes, sir.

Q. And the other signatures are the signatures of those who were present?

A. Yes, sir.

Q. And I call your attention to the writing that begins,

which is in pencil, "These representatives of Fibreboard are not in attendance for contract . . ." When was that added?

A. At the conclusion of the meeting.

Q. And who wrote that?

Could you describe how it came about that this was added?

A. Yes. Towards the end of the meeting, Mr. Thumann requested a copy of the signature page. They tried to run it through the duplicating machine, but it is signed in ink and wouldn't take, so we passed around another paper and all of us re-signed the other paper for the Company, then Mr. Thumann asked Mr. Stumpf to see this copy, and he made the notations below in his own handwriting.

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TRIAL EXAMINER: You are excused. Thank you very much. (Witness excused.)

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R. C. THUMANN

a witness called by and on behalf of the Respondent, having been previously duly sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION

Q. (By Mr. Plant) I think I neglected to ask you, how many production employees are employed at the Emeryville Plant, that is, employees—

A. The hourly workers in July averaged about 750.

Q. Did that include the maintenance people?

A. It did.

Q. About how many of those were maintenance people?

A. About 73.

Q. That is, maintenance and power house?

A. Correct.

• • • • •

Q. (By Mr. Plant) Now, there has been testimony regarding a meeting between you and Mr. Ferber and Mr. Stumpf on June 27, and about another meeting between yourself and others, and those two gentlemen and the rest of the Union committee on July 30. At either of those two meetings did you say anything to the effect that it would be pointless to negotiate regarding termination allowances?

A. I did not.

Q. Did you make any statements to the effect that it would be pointless to negotiate about something?

A. I did not.

Q. Well, did you make any statements to the effect that it would be pointless to negotiate a new contract?

A, I did.

• • • • •

Q. (By Mr. Plant) Did you at any time during those meetings state that it would be pointless to negotiate about anything other than renewal of the contract?

A. I did not.

• • • • •

Q. (By Mr. Plant) Now, Mr. Thumann, when did Fluor Maintenance workers first come into the plant and start working?

• • • • •

A. The first workers that were in the plant were—to my knowledge, was when the picket line of July 31 at 6:00 p.m. was thrown up around the plant.

TRIAL EXAMINER: When did they come in, directly after that, within an hour?

THE WITNESS: They were already there when the picket line was thrown up at 6:00 p.m., July 31, supervisory people, not workers; management people.

Q. (By Mr. Plant) How many were there?

A. I don't know.

Q. Where were they?

A. In the power house.

Q. What were they there for?

A. In order to learn the operation of the power house by observation so that when the last of the power house engineers, the 1304 employees, left at the end of the swing shift, which would be 11:00 o'clock that night, they would be able to take over and operate.

Q. When did the first hourly maintenance workers employed by Fluor get into the plant?

A. On Tuesday, August 18.

Q. What was the reason for that delay?

A. The delay was occasioned by problems attendent to securing the workers and other things of that nature.

Q. Was there any picketing during that period?

A. There was picketing, correct.

Q. How many of them got in on the 18th?

A. My understanding was that it was about a dozen that came to work on the 18th.

TRIAL EXAMINER: Non-supervisory employees?

THE WITNESS: Yes, the hourly workers, craft people.

Q. (By Mr. Plant) Did they return to work on the 19th?

A. They endeavored to return to work on the 19th.

Q. What happened?

A. As they came to work there was such mass picketing and threats of violence that the police closed off the 64th Street entrance of the plant and would not allow anyone to proceed to work.

Q. When did they next come to work?

A. They next endeavored to come to work on the 21st.

Q. Did they succeed?

A. Yes.

• • • • •

TRIAL EXAMINER: Did they go to work that day?

THE WITNESS: Yes, they did.

Q. (By Mr. Plant) How many?

A. About 22.

Q. Was that the full force?

A. No, that was not the full force.

Q. When did the first full group of maintenance workers come in?

A. On Monday, the 24th.

Q. How did they come into the plant?

A. They came in in covered vans.

• • • • •

BEN A. WILSON

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: What is your name, sir?

THE WITNESS: Ben A. Wilson.

TRIAL EXAMINER: Mr. Wilson, where do you live?

THE WITNESS: In Palo Alto.

TRIAL EXAMINER: You may be seated, sir.

Mr. Plant, you may proceed with the examination of Mr. Wilson, who has been duly sworn.

DIRECT EXAMINATION

Q. (By Mr. Plant) Mr. Wilson, are you connected with Fibreboard Paper Products Corporation?

A. I am.

Q. In what capacity?

A. Director of Purchases.

Q. How long have you held that position?

A. Two years.

Q. Prior to that what positions did you hold?

A. Prior to that I was manufacturing manager for the building materials division, dating back to 1956. Prior to that I was manager of the Emeryville operation.

Q. Now, while you were manager of the Emeryville operation, was any sort of study made relative to the question of contracting out maintenance and power house work?

A. Yes, there was.

Q. Did you participate in that study?

A. I did.

Q. Over how long a period did it last?

A. I would say that the subject was considered over a period of a couple of years.

Q. Commencing about when?

A. In 1954, '55, '56, would be the—

Q. And did you reach any conclusions as to the desirability of contracting out work?

A. Yes. Our conclusions were that it offered some very interesting possibilities for improving the economy of the maintenance operations.

Q. Was anything done about it at that time?

A. No, the matter was dropped.

Q. Why?

A. At the time that we received a very preliminary proposal on the subject of contract maintenance I had moved from the Emeryville plant, in fact, and this was during a year in which the Fibreboard Products, Fibreboard Paper Products Corporation was formed with the merger of Pabco Products and Fibreboard Products, Incorporated. The problems of merging the two companies and the absorption of a good many plants into the system were of such magnitude that we simply

did not have the time and attention to devote to this problem, and it was dropped for that reason.

TRIAL EXAMINER: Without going into the details or mentioning names, I don't think it is necessary at this time, who was in these discussions, you and the President of the Company or—

THE WITNESS: No. At that time I reported to a vice-president in charge of manufacturing, and our discussions were with him and with other members of the organizational staff, the San Francisco Office, and then the Emeryville operations.

TRIAL EXAMINER: All right.

Q. (By Mr. Plant) Who was the vice-president in charge of manufacturing at that time?

A. Mr. J. H. Havard.

Q. Now, you mentioned the absorption of additional plants. How many additional plants were absorbed by Pabco by reason of this merger?

A. There were in the order of 15, I couldn't state exactly, but about 15 plants in the Fibreboard Products organization.

Q. Did the matter of reorganizing the administration of the corporation take some time or was it just a matter of short duration?

A. The organization took a total of almost two years, really. It was particularly active in the year 1956.

Q. Now, earlier this year did you again participate in a review of the question of contracting out work?

A. I did not.

Q. Well, did you have anything to do with such a review?

A. I did. I was requested in my capacity as director of purchases to find capable contractors who might be interested in and qualified for this maintenance work.

Q. And who made that request of you?

A. Mr. Burgess.

Q. About when was that, do you recall?

A. As nearly as I can recall, about the 14th or 15th of July.

TRIAL EXAMINER: Who is Mr. Burgess?

THE WITNESS: Mr. Burgess is vice-president of Manufacturing for the Company and my immediate superior.

TRIAL EXAMINER: And what is the first name?

THE WITNESS: George.

MR. PLANT: I believe there is testimony in the record already that he had only recently assumed that position.

Q. (By Mr. Plant) Now, when Mr. Burgess first talked to you, what did he say to you about it?

A. He asked me to make contact with contractors who would be qualified and interested in doing this maintenance work.

TRIAL EXAMINER: You mentioned earlier about a preliminary report that you got. When was that report made, about when, what year?

THE WITNESS: Oh, this is going back to the earlier conversation?

TRIAL EXAMINER: Yes.

THE WITNESS: About 1955 or early in 1956, to the best of my recollection.

TRIAL EXAMINER: Was that report made in writing?

THE WITNESS: Yes, it was.

TRIAL EXAMINER: Who made the report?

THE WITNESS: A professional engineer who was employed to make the survey by the maintenance corporation.

• • • • • •

[TRIAL EXAMINER:] You said you got in touch with some contractors this year, is that right?

THE WITNESS: That's right.

TRIAL EXAMINER: Did you do so in writing?

THE WITNESS: The initial requests were by phone.

TRIAL EXAMINER: All right.

Q. (By Mr. Plant) At the time that Mr. Burgess talked to you, had any study been made of the Company's cost of maintenance?

A. Yes, there were substantial studies that had been made.

Q. Had those been brought up to date?

A. I believe that they had.

Q. Well, now, after Mr. Burgess talked to you, just tell us what you did.

TRIAL EXAMINER: I don't think you fixed the date of the conversation.

MR. PLANT: He said July 14 or 15.

MR. DAVIS: Of this year?

MR. PLANT: Yes.

A. On Mr. Burgess' request, we selected several contractors whom we believed qualified to do this work, con-

A. It seems a fairly clear statement to me.

Q. What does that fairly clear statement mean to you?

A. Exactly what it says, that their proposal was to keep the crew sizes as small as possible, keeping in mind the requirements of the work.

Q. Well, what does "below requirements" mean to you?

MR. PLANT: I will submit that this is argumentative. The letter speaks for itself.

TRIAL EXAMINER: Well, you offered it and he can cross-examine him on it.

Does it mean a smaller crew than you formerly had or were having at that time?

THE WITNESS: That is what I took it to mean.

TRIAL EXAMINER: Did you discuss it prior to that letter, discuss the number of people Fluor was going to employ?

THE WITNESS: The letter itself refers to their "preliminary ideas relative to crew requirements."

TRIAL EXAMINER: So you did discuss it?

THE WITNESS: That's right.

* * * * *

REDIRECT EXAMINATION

Q. (By Mr. Plant) I refer you to Respondent's Exhibit 2, Mr. Wilson, and particularly to the statement in the third from the last sentence which reads: "We further propose that the initial crew size should be held below requirements . . ." Will you state whether or not you understood the word "requirements" as referring back to anything which preceded it in that letter?

A. Yes. I take that to refer to the last paragraph on the first page, which tabulates the requirements that they anticipate.

Q. At the time you made your selection of Fluor as the contractor, did you know what Fluor contemplated dealing with in connection with the work at your plant?

A. No.

Q. Immediately prior to your decision to select Fluor, what other contractor or contractors were still in the picture?

A. The Rosendahl Company.

Q. And what were the factors which determined you in favor of Fluor rather than Rosendahl?

* * * * *

A. The factors that influenced us in favor of Fluor were these. The principal factor was their established reputation and performance.

TRIAL EXAMINER: Whose?

THE WITNESS: Fluor's.

Q. (By Mr. Plant) Which of them was the larger organization?

A. The Fluor organization.

Q. Did you have any idea as to the comparative sizes?

A. Yes. The Fluor Corporation is an engineering corporation with approximately a $200 million annual volume. Rosendahl would be approximately one-tenth that size in annual business.

• • • • •

TRIAL EXAMINER: You are excused, sir. Thank you very kindly.

(Witness excused.)

• • • • •

TRIAL EXAMINER: You may proceed with your oral argument.

MR. PLANT: You will recall, Mr. Examiner, that at the outset of this case I made an opening statement in which I set forth the facts which the evidence to be introduced would reveal, and I think if you would review that opening statement, in light of the evidence, you will find that the evidence established the facts exactly as I said they would be established.

• • • • •

During the course of the meetings the Union proposed, number one, that Thumann instruct the contractor to employ 1304 people, and, two, that they renew the contract with a provision that any contractor be required to employ 1304 people. And again Mr. Thumann rejected the proposal for the entirely legitimate and proper reason which he conveyed to the Union, that the reason for contracting out the work would be to effect economies because they felt that the contractor could do it cheaper and they did not wish to take action which would tie the contractor's hands in that respect.

• • • • •

(Whereupon, at 5:15 o'clock p.m., Tuesday, September 22, 1959, the hearing was closed.)

tacted them and asked them to call on us to discuss the matter.

Q. (By Mr. Plant) Who were those contractors?

A. The contractors that we initially talked to were the Bechtel Corporation, Rosendahl Corporation, and Pacific Mechanical Maintenance.

Q. Now, did you carry on any discussions with those contractors?

• • • • • •

A. (Continuing) We explained the nature of the operations, took the contractors to the Emeryville operations to see for themselves the physical layout of the property and plants.

Q. (By Mr. Plant) Let me interrupt you. You say you took them. You didn't take them all in one group, did you?

A. No.

Q. On separate occasions?

A. On different occasions. And we discussed with them the terms and conditions under which they would consider doing this work.

Q. When did you first get in touch with the Fluor Corporation?

A. Approximately one week later, the 21st of July, as I recall it.

Q. Will you state how you happened to get in touch with them?

A. We learned that they were doing maintenance work for the Union Oil Company and called them. After checking to find out the nature of the work that they did and the company's reputation we called them and asked if they would be interested, and they replied affirmatively and sent a representative to talk with us.

Q. Where was this work of Union Oil Company?

A. This was at the Oleum Refinery.

Q. Now, did you hold some discussions with Fluor?

A. Yes, we did.

Q. And those extended over how long a period?

A. Well, those extended over a period of approximately ten days from the time of initial contact to the time of reaching an agreement with them.

MR. PLANT: I have a letter here dated July 24, 1959, addressed to Fibreboard by Fluor, which I will ask be marked Respondent's Exhibit 1 for identification.

• • • • •

Q. (By Mr. Plant) Now, I show you Respondent's Exhibit 1 for identification, Mr. Wilson, and ask you if you received the original of that communication through the mail?

A. That is right.

Q. On what day did you receive it?

A. On the 27th day of July.

MR. PLANT: I will offer Respondent's Exhibit 1 for identification in evidence.

• • • • •

Q. (By Mr. Plant) Now, had you prior to receipt of this letter of July 27, which has been marked Respondent's Exhibit 1, —

TRIAL EXAMINER: The letter is dated July 24.

MR. PLANT: Yes, the letter is dated July 24.

Q. (By Mr. Plant) Had you prior to that had discussions with Fluor?

A. Yes, we had.

Q. And had they gone through the plant?

A. Yes.

Q. Now, did you have further discussions with them after your receipt of this letter?

A. Yes, we did.

TRIAL EXAMINER: When did you first contact Fluor?

THE WITNESS: The 21st of July.

TRIAL EXAMINER: When did anybody from Fluor come out and inspect the plant or the power house?

THE WITNESS: On the 22nd.

MR. PLANT: Now, I have a letter addressed to Fibreboard, under date of July 30, 1959, on the letterhead of Fluor Maintenance, which I ask be marked as Respondent's Exhibit 2 for identification.

• • • • •

TRIAL EXAMINER: All right. Is there any question about when this letter was received by the Respondent in this case, Mr. Davis?

THE WITNESS: It was handed to them on July 30, at the July 30 conference.

TRIAL EXAMINER: No, I am referring to Respondent's Exhibit No. 1.

MR. DAVIS: If Mr. Plant says so, I will take his word for it.

TRIAL EXAMINER: That the Company received it on July 27?

MR. DAVIS: I didn't even know it was dated July 30.

TRIAL EXAMINER: I am talking about Respondent's 1. That is dated July 24.

MR. DAVIS: No, no argument there.

• • • • •

Q. (By Mr. Plant) Mr. Wilson, Respondent's Exhibit 1 says, "Attached is our formal proposal for maintenance work at your Emeryville facilities." I am now showing you a document in a blue cover, somewhat bulky document, at the front of which appears "Fluor Maintenance, Inc., Los Angeles, California," and ask you if that was the document that you received with Respondent's Exhibit 1.

A. Yes, it was.

MR. PLANT: I will ask that the blue-covered document be accepted in evidence as Respondent's Exhibit 1-A.

• • • • •

Q. (By Mr. Plant) Now, Mr. Wilson, will you take a look at Respondent's Exhibit 2 for identification, being the letter addressed to Fibreboard, to your attention, under date of July 30, 1959, and I will ask you if you received that letter or the original letter?

A. Yes, sir.

Q. Did you receive it through the mail or was it delivered to you?

A. This was delivered to me.

Q. By whom?

A. Mr. Day.

Q. And when was it delivered to you?

A. On the 30th of July.

TRIAL EXAMINER: Where were you when you received the letter?

THE WITNESS: In my office.

Q. (By Mr. Plant) About what time of day was it?

A. I cannot recall.

TRIAL EXAMINER: Was it morning or afternoon?

THE WITNESS: My recollection would be afternoon.

Q. (By Mr. Plant) Now, the letter starts out, Mr. Wilson, as follows: "We are pleased to confirm our various conversations and recommendations relative to the contract mainte-

2.6 *Other Approved Costs*

All other direct field costs encountered in the performance of the work as approved by Fibreboard shall be reimbursable.

2.7 *Small Tools*

2.71 Our usual experience has been that the client desires to furnish the small tools required for performing the work. However, we have an adequate supply of small tools required for performing all maintenance and construction functions and these tools can be furnished under mutually agreeable circumstances.

2.72 Where small tools are furnished by the client, Fluor Maintenance, Inc., assures diligent and responsible care for all such tools assigned to our responsibility. We are attaching as Exhibit "B" our typical list of available small tools.

2.73 If it is requested that Fluor Maintenance, Inc., purchase small tools for Fibreboard's account, Fluor Maintenance will receive reimbursement of actual cost including applicable taxes.

2.8 *Equipment*

Fluor Maintenance, Inc., can furnish any equipment for maintenance or construction work that may be required to supplement the equipment owned by Fibreboard. We propose to furnish any equipment required for standard A.E.D. rental rates in effect for the area of your plant location. For further information we are including with this proposal under Exhibit "A" our list of available equipment and typical current rates. Insurance will be carried on this equipment by Fluor Maintenance, Inc., with no added cost to Fibreboard.

2.9 *Fee*

For administrative overhead and profit for the performance of maintenance work proposed herein, Fluor Maintenance proposes to receive the sum of the following:

2.91 An annual fixed fee of TWENTY-SEVEN THOUSAND DOLLARS ($27,000).

2.92 *Materials*

A fee of 5 per cent for all materials purchased or

nance services proposed for your Pabco Emeryville Plant." Had you had conversations with Fluor covering the subject matter of this letter?

A. Extensive conversations.

Q. Will you state what the reason or reasons were for Fibreboard's decision to contract out the maintenance work?

A. The reason was to achieve greater economy in our Emeryville operations.

Q. Do you know from the studies which were made what your cost of maintenance and power house work had been running at Emeryville?

A. The total cost had been running in the order of three-quarters of a million dollars.

TRIAL EXAMINER: A year?

THE WITNESS: Per year.

Q. (By Mr. Plant) On the basis of your discussions with the several contractors, had you arrived at any conclusion as to what if any savings might be effected by contracting out the work?

A. We felt that economies up to one-third of that total were entirely possible.

Q. Who was it that decided that Fluor should be the contractor?

A. I did.

Q. When did you make that decision?

A. On the 27th of July.

Q. At about what time of day?

A. At approximately 8:00 p.m.

Q. In the evening?

A. In the evening.

Q. And upon what was that decision based?

A. The decision was based on our evaluation of the experience, the skill and potential value of the contractor, as well as the economic considerations that he presented.

Q. Had you made any investigation to determine what other companies Fluor was doing maintenance work for?

A. Yes. We had firsthand knowledge through the Union Oil Company of their contract and their work at the Oleum Refinery. Our people had visited that plant to see first-hand how the work was conducted.

Q. Had you investigated or checked upon whom else they might be doing work for?

items subcontracted pursuant to paragraphs 2.4, 2.6, and 2.73.

3.0 TERM OF AGREEMENT

We propose that the maintenance contract and combined services should be on the basis of a two-year contract biannually renewable and may be canceled by Fibreboard for good and sufficient reasons with a sixty days' notice. In the event of cancellation, Fibreboard will pay to Fluor Maintenance, Inc., as complete and final compensation the total amount of reimbursable costs and fees provided for in the agreement, as accrued to the date of cancellation, which had not been previously paid.

4.0 FACILITIES

4.1 *Field Office Space*

Our requirements for field office space and other facilities are quite modest and limited. Usually, existing temporary type buildings will adequately serve our purpose. An inspection of the plant site to determine the requirements and the availability of existing facilities will best establish working space.

4.2 *Workmen Accommodations*

Also, the requirements for workmen accommodations of change room, locker and tool storage space are modest. Our usual requirements are of the temporary type that require minimum costs. We can adapt our requirements to your convenience.

5.0 GENERAL CONTRACT MAINTENANCE OPERATIONS

We propose that our day-to-day operations will be a functioning component of your organization, subject to your overall direction. Further, we propose that the inspection of our work completions would be under the direction of Fibreboard.

6.0 FLUOR MAINTENANCE, INC., HOME OFFICE FUNCTIONS

The home office functions of Fluor Maintenance, Inc., include the following:

6.1 Close and regular liaison with Fibreboard management to insure complete service and satisfaction on your part.

A. We had determined that they were doing and had been doing work for some time for the American Oil Company in the East, although we did not personally investigate that.

Q. Did you check their relationship with Tidewater Oil Company?

A. We were told and found that it was true that the Tidewater Oil Company was contracting with Fluor Maintenance also.

Q. Where?

A. At the Avon Refinery.

Q. Did you solicit or obtain any reports from any of these people as to whether or not Fluor was a competent or satisfactory contractor?

A. We had the firsthand enthusiastic testimony of people at Union Oil Company, whom we are well acquainted with.

Q. Now, following delivery to you of that letter of July 30, was a draft of a proposed contract between Fibreboard and Fluor prepared?

A. Yes, it was.

Q. And when was that done?

A. That draft was prepared during two days, July 30 and 31.

Q. And who participated in the preparation of the draft?

A. Our General Counsel; Mr. Charles Day of the Fluor Corporation.

Q. You don't mean he is your General Counsel?

A. No, and Mr. Charles Day.

TRIAL EXAMINER: Mr. who?

THE WITNESS: Mr. Charles Day.

TRIAL EXAMINER: Charles Day is with Fluor?

THE WITNESS: Yes.

TRIAL EXAMINER: Just the three of you sat in on it?

THE WITNESS: At various times other members of our staff from San Francisco, including our people on insurance and various other contractual aspects of the contract, sat in, members of my own staff.

MR. PLANT: Now, I am going to ask that there be marked for identification as Respondent's Exhibit 3 a letter of which I, unfortunately, have only one copy, but I will supply an additional one.

• • • • •

Q. (By Mr. Plant) I will show you Respondent's Exhibit

3, Mr. Wilson, and ask you if the signature which appears thereon is a facsimile of your signature.

A. That is correct.

Q. Did you mail or send the original of that letter to Fluor on or about July 31?

A. The original was delivered in person to Mr. Day on that date.

Q. Where was that done?

A. Mr. Day was at the Claremont Hotel.

Q. And you took the letter over to him?

A. I did not, personally. It was devileved by Mr. Sparrowe of our Company.

TRIAL EXAMINER: What was his business, what was it on that day, July—

THE WITNESS: Insurance Manager.

TRIAL EXAMINER: And what is his first name?

THE WITNESS: Arch.

Q. (By Mr. Plant) Now, did you enclose with this letter two copies of a draft of a maintenance agreement?

A. Yes, sir.

• • • • •

Q. (By Mr. Plant) Now, following the delivery of that letter and the enclosed drafts, did you make any changes in the draft?

A. We did.

Q. When was that done?

A. On the 4th of August.

Q. It was on Tuesday?

A. Tuesday.

Q. And who made the changes?

A. Mr. Day, his counsel, myself and our General Counsel.

Q. Now, following the making of those changes in the draft, was anything done about signing the contract?

A. The redrafted contract was submitted to Mr. Burgess, of our Company, for signature, and he signed it that afternoon and it was given to Mr. Day.

Q. Did he sign it then?

A. Mr. Day did not sign it then.

Q. Did he take it with him?

A. Yes.

• • • • •

MR. PLANT: Now, I have shown to General Counsel a letter which I will ask be marked Respondent's Exhibit 4 for identification.

• • • • •

MR. PLANT: Mr. Davis, will you stipulate that the original letter, of which Respondent's Exhibit 4 is a copy, was received by Mr. Tuft, of my office, together with executed duplicate originals of the maintenance agreement on or shortly after August 11, 1959?

MR. DAVIS: If you assure me that that is so, I will so stipulate.

MR. PLANT: Mr. Tuft assures me that that is so.

MR. DAVIS: All right, then.

• • • • •

Q. (By Mr. Davis) Well, you had under study the question of savings and whether or not this contracting out certain work would be a saving for Fibreboard, didn't you?

A. The Company had this under study.

• • • • •

Q. (By Mr. Davis) You were in on the discussions concerning the savings?

A. Yes.

Q. And what employees were you concerned with on savings, what employees, what were the employees doing?

A. The employees were doing maintenance work and power house work.

• • • • •

Q. And on July 27, Respondent's Exhibit 1-A was received, is that correct?

A. That's right.

Q. And you studied this exhibit, is that correct?

A. Yes.

Q. And you made the decision that Fluor should get the contract, you testified to that?

A. Yes.

Q. And the considerations upon which you based your decision included the items in this exhibit, is that correct?

A. That's correct.

Q. Now, I call your attention to Exhibit D and ask you,

this is one of the items that you read and were familiar with, is that correct, the items contained in Exhibit D in Respondent's Exhibit 1-A, Subsection D?

A. In general I was familiar with this section.

Q. Now, Subsection D of Respondent's Exhibit 1-A contains a copy of the Yorktown, Virginia, Project Maintenance Agreement between Fluor Maintenance and various International Unions? Will you look at this agreement and tell me if the United Steelworkers of America is one of the unions named—

MR. PLANT: I will object to the question upon the ground that the document is in evidence and speaks for itself.

TRIAL EXAMINER: Overruled.

Are they named, the United Steelworkers of America, are they a party to this contract or contracts?

THE WITNESS: No.

Q. (By Mr. Davis) You knew that Fluor intended to put —to operate maintenance and power house work that you were awarding them on the basis of this Yorktown Agreement, did you not?

A. I knew that they had no contract at the Yorktown Works. This was offered as a proposal and was illustrative of the type of operation that they would do for us. This is not a contract.

Q. Well, it is a copy of a contract?

A. Yes, an illustrative one.

Q. And you knew that the Yorktown agreement was the one that they intended to put into effect in Fibreboard?

A. The type of agreement, yes.

Q. And you knew that when you awarded them the contract, you knew that Steelworkers would not be employed by Fluor, is that correct, members of the Steelworkers?

A. No, it is not.

* * * * *

Q. (By Mr. Darwin) Now, Mr. Wilson, will you tell me what you understood by the phrase "We further propose that the initial crew size should be held below requirements to initiate in the minds of all concerned that each man is going to have to perform to a maximum in order to get the required volume of work completed on time"? What did you understand by the phrase "the initial crew size should be held below requirements"?

We tabulate below our preliminary ideas relative to crew requirements:

Boiler House	8
Electricians	9
Fitters	9
Welders	2
Machinists	15
Oilers	4
Millrights	7
Carpenters	2
Laborers	4
Total	60

You will note that we propose a greater number of crafts than you are currently utilizing. This allows for maximum performance for each job since the craftsman's skill will more closely match the job requirements. Due to our flexibility, we will not be required to keep any craft on the job when there is no work available.

We further propose that the initial crew size should be held below requirements to initiate in the minds of all concerned that each man is going to have to perform to a maximum in order to get the required volume of work completed on time.

We have verbally presented tentative rate schedules to Mr. Van Voorhees. We are working on firming up these rates and will present them in a schedule to you within the next day or two.

If we can provide any additional information, please advise.

Very truly yours,
FLUOR MAINTENANCE, INC.
Andrew W. Ferguson
Sales Engineer

RESPONDENT'S EXHIBIT 3

FIBREBOARD PAPER PRODUCTS CORPORATION
475 Brannan Street, San Francisco 19, California

July 31, 1959

Fluor Maintenance, Inc.
2500 South Atlantic Boulevard
Los Angeles 22, California

Attention: Mr. Charles H. Day
Vice President-Manager

Gentlemen:

Herewith are two copies of the retyped draft of our maintenance agreement. We believe this is satisfactory but suggest that it would be well for us to get in touch with each other early next week for final approval and signature. In the meantime you are authorized to proceed in accordance with the provisions of the agreement.

Very truly yours,

FIBREBOARD PAPER PRODUCTS CORPORATION
B. A. Wilson
Director of Purchases

RESPONDENT'S EXHIBIT 4

FLUOR MAINTENANCE, INC.
2500 South Atlantic Boulevard
Los Angeles 22, California

August 11, 1959

Malcolm Tuft, Esquire
Brobeck, Phleger and Harrison
111 Sutter Street
San Francisco, California

Dear Mr. Tuft:

Enclosed pleased find two completely executed duplicate originals of the maintenance agreement between this company and Fibreboard Paper Products Corporation.

RESPONDENT'S EXHIBIT 1

FLUOR MAINTENANCE, INC.
2500 South Atlantic Boulevard
Los Angeles 22, California

July 24, 1959

Fibreboard Paper Products Corporation
475 Brannan Street
San Francisco 19, California

Attention: Mr. B. A. Wilson
Director of Purchases

Gentlemen:

Attached is our formal proposal for maintenance work at your Emeryville facilities. This confirms our several discussions and verbal presentations.

You will note as the final paragraph of the proposal we suggest it be used as a basis for a mutually acceptable contract. This is to advise that we will be happy to work on the basis of an accepted proposal letter until such time as the formalities of this contract can be completed.

We recognize the time urgency on starting of this project with your machinists' labor agreement expiring at midnight July 31, 1959, and your desire to start contract maintenance operations immediately thereafter. We want to assure you that we can staff the maintenance operations and take over all maintenance functions and boiler plant operations as of that time without serious interruption to the regular production schedules. In order to accomplish this we need a few days' preparation and would appreciate receiving your approval on Monday, July 27, 1959.

If we are awarded your contract maintenance work, we would recommend that during the early phases additional Fluor supervisory personnel be at the jobsite to insure an absolute minimum of interruption or confusion during the change over. We have these people immediately available on the West Coast.

We also have available technically trained engineers with extensive experience in operation of boiler plant facilities. We

recommend consideration be given to utilization of these personnel while training new operators for the power plant.

We have attempted in the proposal to cover all of the subjects of our discussion; but in case additional questions should arise, we would be pleased to answer them in conference or any other method that would be to your convenience so that complete understanding is achieved.

It has been our pleasure to have the opportunity to meet with you and to present our proposal to your company, and we would like to assure you that we can serve your interests and needs to your complete satisfaction.

Very truly yours,
FLUOR MAINTENANCE, INC.
Andrew W. Ferguson
Sales Engineer

RESPONDENT'S EXHIBIT 1-A

FLUOR MAINTENANCE, INC.
2500 South Atlantic Boulevard
Los Angeles 22, California

July 24, 1959

Fibreboard Paper Products Corporation
475 Brannan Street
San Francisco 19, California
Attention: Mr. B. A. Wilson
Director of Purchases

Gentlemen:

We wish to present for your consideration our proposal for performing contract maintenance and other such work as your company may assign to Fluor Maintenance, Inc., at your Pabco Plant in Emeryville, California.

1.0 SERVICES TO BE PERFORMED

We propose to furnish any or all of the following services that will meet with your requirements at your convenience.

1.1 *Contract Maintenance*

We propose to furnish a service to your company that will provide a basic contract maintenance crew to serve as the nucleus of supervision, skilled mechanics, and unskilled labor forces that can be expanded or contracted to meet your

day-to-day assigned work schedule or turnaround requirements. This crew can be decreased on a few hours' notice or expanded to perform only your required productive maintenance functions.

1.2 *Modification, Alteration, and Plant Improvement*

We further propose to perform all assigned work within your plant of such nature as modification, alterations, plant improvement, and additions. This work can be performed by the same workmen who are assigned to the regular maintenance work. The work assignments will naturally be within the skills, experience, and abilities of the respective craftsmen so that the greatest amount of efficiency with the lowest cost will be obtained.

1.3 *Minor Construction Work*

The basic crews we propose to furnish for the maintenance, modifications, alterations, and plant improvement work will also be available for and qualified to perform any minor construction work that you assign to us. We are confident you will find, as other plant managements have found, that these crews will be a very important factor in your plant operation. Because we are established on your jobsite with a functioning organization, we can perform the work at a lower cost than outside groups.

1.4 *Supervision and Office Help*

We propose to furnish well-qualified supervisors with years of successful background experience in refinery maintenance work. Our basic crew would require only one superintendent who would be eminently qualified to work cooperatively with and under your management so that our work would be functioning as an integral part of your operating organization. Our superintendent and staff would also perform the following functions:

Making recommendations for systematic maintenance and preventive maintenance programs.

Planning and coordinating all phases of maintenance and plant improvements to eliminate interferences or interruptions to production.

Planning for periodic inspections and inspection shutdowns.

Our recommendations for supervisors are always sub-

PABCO PROPOSALS FOR 1959

SECTION I—WAGE SCALES

We would like to arrive at a basis to eliminate the unfair wage discrepancy between the machinist and the other crafts in the plant.

SECTION IV—SENIORITY

Paragraph b—Change ninety (90) days to thirty (30) days.

SECTION V—HOURS OF WORK AND OVERTIME

We request a 35 hour week—schedule of shifts to be worked out.

SECTION XII—HOLIDAYS

1. Add, one additional paid Holiday.
2. Delete worked the day before and the day after, for qualifying.

SECTION XIII—NIGHT DIFFERENTIALS

(a) Change to ten (10) percent, and fifteen (15) percent.

SECTION XV—VACATIONS

We request three weeks vacation after five years of service, and four weeks vacation after fifteen years of service.

SECTION XVII—WELFARE PLAN

The plant to pay full cost of Health and Welfare. The Plant also to extend the coverage to retired employees under the pension plan.

SECTION XXI—ADJUSTMENT OF COMPLAINTS

Add new section between (a) and (b) as follows:

Such meeting between an executive of the Plant and a representative of the Machinist Union no later than five working days after referral to the above representatives of the parties. Failure of either party to be available shall constitute concession of the grievance to the other party. The time limit may be extended by mutual agreement.

NEW

We request five cents per hour to be placed into a fund to provide for supplementary unemployment benefits for em-

mitted to your management for consideration and appraisal of their background of experience and qualifications before any assignments are made. The number of supervisors and office overhead is always under your direct control and subject to your approval in accordance with the assigned work load. This force is quite flexible and subject to modification to meet the day-to-day efficiency requirements.

The necessary field office staff will be responsible for all maintenance payrolls and other related functions. Also, the office staff will supply cost records on all work performed in accordance with your accounting procedures.

Our superintendent will, in all practical purposes, report to Fibreboard plant management. He will become an integral part of your operating organization and will work energetically and cooperatively toward accomplishing your management's orders and objectives.

It is planned that our skilled craftsmen will work with and alongside your production forces so that maximum production and lowest costs will be obtained with plant harmony and progress.

1.5 *Technical and Specialized Personnel*

In addition to providing the supervision, skilled and unskilled labor, and clerical help for your maintenance work, we can provide technical and specialized personnel for performing the following functions:

Corrosion studies and preventive programs.
Metallurgical engineering special studies.
Process and development work.
Safety and personnel training programs.
Other specialized services that are common to our experience in process, chemical, refinery, and steam power plants.

We can furnish this special personnel for short- or long-term assignment, according to your desires, from our backlog of skilled technical specialists available through our parent company, The Fluor Corporation, Ltd. Reimbursement for this special work will be subject to rates established by mutual agreement between your company and The Fluor Corporation, Ltd.

ployees laid off in a reduction in force. To provide at least sixty-five percent of the employee's normal weekly wage, including unemployment benefits.

Qualifications to be those of the State Department of Employment.

GENERAL COUNSEL'S EXHIBIT 6A

FIBREBOARD PAPER PRODUCTS CORPORATION
P. O. Box 4317 • Oakland 23, California

July 27, 1959

Mr. Wm. F. Stumpf, Representative
UNITED STEELWORKERS OF AMERICA
610 Sixteenth Street—Rooms 219-220
Oakland 12, California

SUBJECT: EMERYVILLE PLANT AGREEMENT

Under date of May 26, 1959, Mr. Stumpf you notified us of your desire to modify our collective bargaining agreement with your Union dated September 24, 1958, relative to maintenance employees at our Emeryville plant, and of your desire to meet for the purpose of negotiating a new contract to be effective August 1, 1959. Under date of June 15, 1959, you forwarded your contract proposals.

For some time we have been seriously considering the question of letting out our Emeryville maintenance work to an independent contractor, and have now reached a definite decision to do so effective August 1, 1959.

In these circumstances, we are sure you will realize that negotiation of a new contract would be pointless. However, if you have any questions, we will be glad to discuss them with you.

R. C. THUMANN
Director of Industrial Relations

2.0 REIMBURSEMENT FOR COSTS

2.1 *Direct Labor*

As compensation for furnishing all direct labor, we propose to receive reimbursement at Fluor Maintenance's cost for salaries and wages of all craft labor, foremen and general foremen engaged in the performance of the work; all labor fringe benefits required by applicable labor agreement; payroll taxes, e.g., F.I.C.A., S.U.I., and F.U.I., levied or assessed against Fluor Maintenance, Inc., now or hereafter imposed by any governmental body, which are measured by salaries or wages of employees engaged in the work.

2.2 *Supervision, Office Help, and General Field Office Overhead*

We propose to receive reimbursement at Fluor Maintenance's cost for salaries and wages of all field supervisors and field office employees; the pro rata share of vacation and sick leave costs; all payroll taxes, e.g., F.I.C.A., S.U.I., and F.U.I., levied or assessed against Fluor Maintenance, Inc., now or hereafter imposed by any governmental body, which are measured by salaries or wages of employees engaged in our field supervision and office help operations; and, the cost of subsistence, travel time and expense for temporary assignments when required.

2.3 *Costs Relating to Labor*

2.31 *General Expenses*

Uuder "General Expenses" we classify such items as utilities, general field office expenses, such as telephone, telegraph, stationery and operating supplies, expendable field supplies, and such other costs that are not specifically classified but are required at the jobsite to perform the assigned work. We propose that where these items are furnished they will be reimbursable, including applicable taxes.

2.32 *Permits and Inspections*

The actual cost of permits required by any governmental body in connection with the maintenance or construction work herein provided for, and the cost of inspection work required by law or ordinance of any governmental body shall be a reimbursable cost.

2.33 *Insurance*

All insurance required by Fibreboard, plus other coverage that is mutually agreed for complete protection, shall be reimbursable. We are attaching Exhibit "C" of our standard insurance coverage. The insurance requirement can be specifically negotiated to mutual approval between Fibreboard and Fluor Maintenance, Inc.

2.4 *Purchased Items*

2.41 *Materials Including Transportation*

This proposal is based on the intention that the majority of all materials will be supplied and furnished at the jobsite by Fibreboard and that all handling costs, taxes, etc., pertaining to those materials will be for the account of Fibreboard. Where it is the desire of Fibreboard to require Fluor Maintenance, Inc., to purchase materials for the maintenance or construction work, Fluor Maintenance, Inc., will receive reimbursement of actual costs including applicable taxes.

2.42 *Outside Shop Work*

On subcontract work required or performed in outside shops, such as job machine shops, welding shops, electrical shops, pipe shops, paint shops, etc., which is ordered by and paid for by Fluor Maintenance, Inc.; we propose that Fluor Maintenance, Inc., will receive reimbursement of actual costs including applicable taxes and transportation costs.

2.5 *Additional Management, Planning, Supervisory, Technical or Specialized Services*

Any additional services beyond the services included in 2.1, 2.2, 2.3, and 2.4 required and approved by Fibreboard will be supplied by Fluor Maintenance, Inc., in accordance with standards and rates that are applicable to the specific case.

There will be no home office charges included unless special circumstances occur that are not presently anticipated.

In case of any special circumstances incurring home office costs, these will be negotiated with your management and written approval obtained before any commitments are incurred.

6.2 Frequent contact with our field supervisor to service all requirements.

6.3 Labor contract negotiations and government handling procedures.

6.4 Regular meetings with labor representatives to insure harmony and peak production efficiency.

6.5 Special meetings to handle any problem, improve cost methods, special problem or mutual benefit efforts.

6.6 Regular quarterly meetings with the International Labor President and Representatives in Washington, D. C., to insure top handling of all labor problems and compliance with labor contracts.

6.7 Continued research on maintenance methods which can be presented to Fibreboard for their consideration on any possible work improvements or cost reduction plans.

7.0 LABOR CONTRACTS

Our years of experience in performing contract maintenance services have taught us that a successful maintenance program is dependent upon good workable contracts with labor. We would propose for your consideration the type of labor contract we have negotiated with the International Presidents. Our experience has proved that this type of contract offers substantial benefits particularly when it jointly includes the local labor representatives' participation but under the International Presidents' supervision. An example of the type of labor contract we propose is included under Exhibit "D" for your inspection.

Fluor Maintenance, Inc., has been assured by the respective International Presidents of the skilled crafts required that we could apply the same contract with the same provisions as the attached Yorktown, Virginia Maintenance Agreement for operation at Emeryville.

This type of labor contract makes available the skilled craftsmen who are familiar with maintenance and construction work but eliminates many of the labor problems encountered when owners perform maintenance with their own crews or with subcontractors who use Building Trades working conditions. Examples of benefits in this type of proposed contract are:

Elimination of most of the fringe benefits, such as travel

time, subsistence, vacation pay, sick leave, termination pay, paid holidays, etc.

We retain the right of complete selection and determination of a craftsman's ability and production.

Right to terminate employees or reduce work forces at any time.

Mixed crew assignments with considerable jurisdictive assignment latitude.

Elimination of any work quotas or work slow-down methods.

Maximum utilization of man-hour savings, tools or equipment.

Right to enforce high rates of production from all maintenance employees.

Labor has assured us of a cooperative endeavor that will give us greater production through our labor forces which will result in giving Fibreboard a lower cost on their maintenance work.

8.0 SAFETY

Fluor Maintenance, Inc., is very cognizant of the most important function of on-job safety and safety training with constant vigilant efforts. We will maintain our effective safety program in strict compliance with the requirements and wishes if Fibreboard. We are attaching for your inspection as Exhibit "E" our basic safety standards that can be adapted to your respective plant requirements.

9.0 GENERAL WORKING RULES AND PROCEDURES

Fluor Maintenance, Inc., proposes to comply with the working rules and conduct requirements of Fibreboard. Also, we will make every effort to assure Fibreboard of our desire to conduct our work affairs so that no conditions will develop that will cause Fibreboard concern among their work forces.

Further, Fluor Maintenance, Inc., proposes to perform their work so that all possible cooperation will be obtained with Fibreboard. Our work forces will become a cooperative and efficient function of the production and work programs of Fibreboard.

10.0 CONTRACT AGREEMENT

Fluor Maintenance, Inc., will be willing to incorporate the provisions of this proposal into a mutually agreeable contract which will serve as the basis of performing assigned work for Fibreboard.

Very truly yours,
FLUOR MAINTENANCE, INC.
Chas. H. Day
Vice President-Manager

TABLE OF CONTENTS

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[Exhibits Omitted]

RESPONDENT'S EXHIBIT 2

FLUOR MAINTENANCE, INC.
2500 South Atlantic Boulevard
Los Angeles 22, California

July 30, 1959

Fibreboard Paper Products Corporation
475 Brannan Street
San Francisco 19, California

Attention: Mr. B. A. Wilson
Director of Purchases

Gentlemen:

We are pleased to confirm our various conversations and recommendations relative to the contract maintenance services proposed for your Pabco Emeryville Plant.

We have reviewed the present operations in considerable detail by consultation with your personnel and visits to the site. Based on the present conditions where a total of approximately 75 men are being utilized, we are confident that we can perform a comparable level of maintenance with approximately 60 men after the initial period required to acquaint Fluor personnel with the plant and its requirements. Based on our previous experience and our analysis of your current operations, we believe that this sizable reduction of forces is readily attainable. Additional savings will be realized with reduced fringe benefits and reduced overtime rates.

Effective savings will also be gained by preplanning and scheduling of the majority of all services provided by Fluor through the careful use of the "work order" system. This will allow us to have on hand only those men required to perform the work without slow-down. If emergencies arise additional qualified men can be obtained on a few hours' notice. As a result of effective preplanning and scheduling efforts along with carefully organized material controls, we estimate that within a few months we can further reduce the maintenance forces substantially below the 60 man level.

You will note that I have attached Exhibits A and B to the agreement as requested by Mr. Wilson. Exhibit A is the schedule of wage rates previously furnished in another form and Exhibit B is the schedule of rental rates for tools and equipment.

Thank you for your courtesy and cooperation during our conferences last week.

Very truly yours,
THE FLUOR CORPORATION, LTD.
Theodore K. Martin
Associate Counsel

GENERAL COUNSEL'S EXHIBIT 8

District 38
UNITED STEELWORKERS OF AMERICA
AFL-CIO
610 Sixteenth Street • Rooms 219-220 Pacific Building
Oakland 12, California • Sub-District 3

May 26, 1959

Fibreboard Paper Products Corporation
P. O. Box 4317
Oakland 23, California

Attention: Mr. R. C. Thumann, Director of
Industrial Relations

Gentlemen:

Pursuant to the provisions of the Labor Management Relations Act, 1947, you are hereby notified that the Union desires to modify as of August 1, 1959 the collective bargaining contract dated July 31, 1958, now in effect between the Company and the Union.

The Union offers to meet with the Company at such early time and suitable place as may be mutually convenient, for the purpose of negotiating a new contract.

Very truly yours,
UNITED STEELWORKERS OF AMERICA
By Wm. F. Stumpf, Representative
By Lloyd Ferber, Business Rep.
Local 1304

GENERAL COUNSEL'S EXHIBIT 4

FIBREBOARD PAPER PRODUCTS CORPORATION
P. O. Box 4317 • Oakland 23, California

June 2, 1959

Messrs. Wm. F. Stumpf and Lloyd H. Ferber
UNITED STEELWORKERS OF AMERICA
610 Sixteenth Street—Rooms 219-220
Oakland 12, California

This will acknowledge your letter of May 26, 1959, requesting a meeting to discuss modifications of the current Agreement between the Emeryville Plant of Fibreboard Paper Products Corporation and the United Steelworkers of America on behalf of the East Bay Union of Machinists, Local 1304.

We will contact you at a later date regarding a meeting for this purpose.

R. C. THUMANN
Director of Industrial Relations

GENERAL COUNSEL'S EXHIBIT 5

EAST BAY UNION OF MACHINISTS
LOCAL 1304
United Steelworkers of America, AFL-CIO
3637 San Pablo Avenue
Emeryville 8, California

June 15, 1959

Pabco Division of Fibreboard Products
Foot of 64th Street
Emeryville, California

Attn. Mr. Thumann

Gentlemen:

Enclosed find the proposals of Local 1304, and its members working at the Emeryville Plant for the 1959 negotiations.

We stand ready to meet with you regarding the same at your convenience.

Respectfully,
EAST BAY UNION OF MACHINISTS
LOCAL 1304 U.S. of A., AFL-CIO
LLOYD H. FERBER
Business Agent

GENERAL COUNSEL'S EXHIBIT 6B

FIBREBOARD PAPER PRODUCTS CORPORATION
P. O. Box 4317 • Oakland 23, California

July 27, 1959

Mr. Lloyd H. Ferber, Business Representative
EAST BAY UNION OF MACHINISTS, LODGE 1304
United Steelworkers of America, AFL-CIO
3637 San Pablo Avenue
Emeryville 8, California

SUBJECT: EMERYVILLE PLANT AGREEMENT

Under date of May 26, 1959, Mr. Ferber, you notified us of your desire to modify our collective bargaining agreement with your Union dated September 24, 1958, relative to maintenance employees at our Emeryville plant, and of your desire to meet for the purpose of negotiating a new contract to be effective August 1, 1959. Under date of June 15, 1959, you forwarded your contract proposals.

For some time we have been seriously considering the question of letting out our Emeryville maintenance work to an independent contractor, and have now reached a definite decision to do so effective August 1, 1959.

In these circumstances, we are sure you will realize that negotiation of a new contract would be pointless. However, if you have any questions, we will be glad to discuss them with you.

R. C. THUMANN
Director of Industrial Relations

GENERAL COUNSEL'S EXHIBIT 7

District 38
UNITED STEELWORKERS OF AMERICA
AFL-CIO

610 Sixteenth Street • Rooms 219-220 Pacific Building
Oakland 12, California • Sub-District 3

July 29, 1959

Fibreboard Paper Products Corporation
P. O. Box 4317
Oakland, California

Attention: Mr. R. C. Thumann,
Director of Industrial Relations

Gentlemen: Re: Subject: Emeryville Plant Agreement

Reference is made to your letter of July 27, 1959.

We interpret your letter to mean that you are attempting to cancel your present agreement with us. If that is your intention, you are too late. We direct you to the provision of the agreement which requires that you should have given us at least sixty (60) days notice of cancellation prior to the July 31, 1959 expiration date.

In the absence of such notice, the contract has been automatically renewed for another year, subject, of course, to your obligation to meet with us at once to discuss the proposed modifications which we sent you, following our notice of May 26 for modifications of the existing agreement.

We trust that you will not lock out the employees covered by our agreement, and that you will not consummate the plan outlined in your letter of July 27th. We call upon you to meet with us at once.

Very truly yours,
UNITED STEELWORKERS OF AMERICA
AFL-CIO

By Wm. F. Stumpf, Representative
By Lloyd Ferber, Business Rep.
Local 1304

GENERAL COUNSEL'S EXHIBIT 8

FIBREBOARD PAPER PRODUCTS CORPORATION
P. O. Box 4317 • Oakland 23, California

July 30, 1959

Messrs. Wm. F. Stumpf, Representative, and
Lloyd H. Ferber, Business Representative Local 1304
UNITED STEELWORKERS OF AMERICA
610 Sixteenth Street—Room 219-220
Oakland 12, California

Gentlemen, the following is in reply to your letter of July 29, 1959.

1. The introductory provisions of our Agreement with your Union provide in pertinent part:

> "This Agreement shall continue in full force and effect to and including July 31, 1959, and shall be considered renewed from year to year thereafter between the respective parties unless either party hereto shall give written notice to the other of its desire to change, modify, or cancel the same at least sixty (60) days prior to expiration."

Under date of May 26, 1959, you notified us of your desire to modify the Agreement and to meet with us for the purpose of negotiating a new Agreement to be effective August 1, 1959. Under the provision quoted above, our Agreement therefore will expire at midnight July 31, 1959, and will not be automatically renewed. See *American Woolen Company*, 57 N.L.R.B. 647. Our letter of July 27, 1959, was not an attempt to cancel the Agreement but was written in contemplation of the fact that it will, by its terms, expire at midnight, July 31, as set forth above.

2. Aside from the foregoing, the Agreement does not prohibit us from letting work to an independent contractor, and we have the right to do so. See *Amalgamated Association, etc.*, v. *Greyhound Corporation*, 231 F(2d) 585.

3. While it will be necessary for us to lay off or terminate employees heretofore performing the work to be taken over by the contractor, we do not contemplate any lockout.

4. As we stated in our letter of July 27, it appears to us that since we will have no employees in the bargaining unit

covered by our present Agreement, negotiation of a new or renewed Agreement would appear to us to be pointless. However, we repeat that we will be glad to discuss with you at your convenience any questions that you may have.

R. C. THUMANN

Director of Industrial Relations

Charles J. Smith, International-Pittsburgh, Jay Darwin

GENERAL COUNSEL'S EXHIBIT 9*

MEETING OF FIBREBOARD, EMERYVILLE PLANT
and
LU 1304 U.S. of A.—A.F.L.-C.I.O.
Subject—Contract Negotiations

July 30, 1959

/s/ Wm. F. Stumpf, United Steelworkers of A.
/s/ Arthur R. Hellender, Central Labor Council
/s/ Dave Arca, Pabco Committee
/s/ Jack Griffin, Pabco Committee
/s/ Lloyd Ferber, 1304
/s/ Harry Bradford, Pabco Committee
/s/ Harry Cunningham, Pabco Committee
/s/ William Buhl, Pabco Committee
/s/ Lincoln Beck, Pabco Committee

These representatives of Fibreboard are not in attendance for Contract Negotiations but to restate their opinion that negotiations for a new contract would be pointless in view of management's intention to contract out powerhouse and maintenance work.

/s/ Les Lountzen
/s/ Squire Fridell
/s/ R. C. Thumann
/s/ Wm. Maffey
/s/ R. Baldwin, Jr.

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* The original of this exhibit is handwritten. The various signatures are in ink. The note opposite the lower signatures is in pencil.

GENERAL COUNSEL'S EXHIBIT 10

MAINTENANCE AGREEMENT

The parties hereto

FIBREBOARD PAPER PRODUCTS CORPORATION,
a Delaware corporation (herein called "Owner")
and
FLUOR MAINTENANCE, INC.,

a California corporation (herein called "Contractor")
do hereby agree as follows:

1. *Term.* The term of this agreement shall commence as of midnight on July 31, 1959, and shall terminate at midnight on July 31, 1961; provided Owner shall have the right to terminate the same at any time upon sixty (60) days' prior written notice to Contractor, or upon any lesser period of notice if Owner shall pay the pro rata share of Contractor's fixed fee for sixty days after the giving of notice.

2. *Scope of the Work.* Contractor shall furnish all labor, supervision and office help required for the performance of maintenance work, operation of the boiler plant, and minor alteration and minor construction work at the Emeryville plant of Owner as Owner shall from time to time assign to Contractor during the period of this contract; and shall also furnish such tools, supplies and equipment in connection therewith as Owner shall order from Contractor, it being understood however that Owner shall ordinarily do its own purchasing of tools, supplies and equipment. Contractor shall provide a minimum of one superintendent and one office employee, and a basic maintenance crew sufficient to perform the day-to-day maintenance work at said plant, and such work force shall be expanded or contracted from time to time to meet the requests of Owner. It is one of the important inducements to Owner to enter into this contract that Contractor shall ordinarily be able to make such changes on a few hours' notice.

3. *Facilities to be Provided by Owner.* Owner shall assign to Contractor a designated central shop area, office space, locker room, and sanitary facilities at the Emeryville plant. Contractor shall have the right to use all tools and equipment in such areas and such other tools and equipment as Owner shall provide. Contractor shall make written requests upon Owner for all other tools, supplies and equipment needed in

the performance of the work. Tools, supplies and equipment shall be furnished by Contractor only when requested by Owner.

4. *Contract Price.* The price to be paid by Owner to Contractor for the performance of the work hereunder shall be the amount of Contractor's reimbursable costs defined below, plus a fixed fee of $2,250 per month.

5. *Reimbursable Costs.* Contractor's reimbursable costs hereunder shall be as follows:

(a) *Direct Labor.* Contractor's costs of salaries and wages for all craft labor, foremen, and general foremen engaged in the performance of the work, the cost to Contractor of all labor fringe benefits applicable thereto which are required by labor agreements, and all payroll taxes, e.g., FICA, SUI and FUI, levied or assessed against Contractor now or hereafter imposed by any governmental body and which are measured by salaries or wages of employees engaged in the performance of the work hereunder.

(b) *Supervision, Office Help and General Field Office Overhead.* Contractor's costs of salaries and wages of field supervisors and field office employees while engaged in the performance of the work hereunder; the pro rata share of vacation and sick leave and group insurance costs applicable thereto; all payroll taxes, e.g., FICA, SUI and FUI, levied or assessed against Contractor now or hereafter imposed by any governmental body which are measured by salaries or wages of employees engaged in such field supervision and office help operations; and the cost of subsistence, travel time and expense for temporary assignments when required.

(c) *General Field Expenses.* The field cost of utilities, telephone, telegraph, stationery, operating supplies and expendable field supplies when furnished by Contractor at the request of Owner and used by Contractor in performance of the work hereunder.

(d) *Supplies, Tools and Equipment and Outside Shop Work.* The cost to Contractor of such tools, supplies and equipment and of any outside shop work, when provided by Contractor at the request of Owner and used in the performance of the work hereunder. The title to any such items which are purchased by Contractor shall

be and remain in Owner. All items furnished on a rental basis shall be reimbursed at the rental cost thereof (including any insurance costs applicable to such rental) to Contractor if not owned by Contractor and, if owned by Contractor, at rental rates not in excess of the applicable published rental rates of the Associated Equipment Dealers, plus actual transportation costs to and from the job site.

(e) *Insurance.* The cost to Contractor of workmen's compensation insurance applicable to reimbursable wages and salaries. No other costs of Contractor's insurance shall be reimbursable hereunder.

(f) *Permits, Licenses and Fees.* The cost to Contractor of permits, licenses and license fees directly applicable to Contractor's performance of work hereunder.

All necessary head office supervision and services shall be supplied by Contractor but no head office costs of Contractor shall be reimbursable hereunder except those listed in subparagraphs (c) and (f) of this paragraph, and no field office expenses not expressly listed above shall be reimbursable except when approved in advance by Owner.

6. *Independent Contractor.* All work hereunder shall be performed by Contractor as an independent contractor and Contractor shall have full, complete and exclusive control over its employees and shall direct and control all means and methods by which the work hereunder shall be performed.

7. *Insurance.* Contractor shall be named as an additional insured on the following policies of Owner up to the following limits with respect to loss or liability incurred by Contractor in the performance of the work hereunder.

Comprehensive bodily liability insurance, including motor vehicle bodily injury liability insurance:

Each person	$5,000,000
Each occurrence	$5,000,000

Comprehensive property damage insurance:

Motor vehicle—each occurrence	$5,000,000
All other—each occurrence	$5,000,000

Such policies shall contain the provision that the same shall not be cancelable except upon ten (10) days' prior written notice to Contractor, and Owner shall provide Contractor with certificates of such coverage.

8. *Waiver of Subrogation.* All fire and extended coverage policies of each party with respect to its property at the Emeryville plant site shall contain provisions permitting waiver of subrogation against the other party and, each of the parties releases the other and the employees, agents, representatives, contractors and subcontractors of the other from all liability for the loss or destruction of or damage to any of such property of the releasing party, caused by fire or extended coverage risks, and risks covered by standard boiler and machinery direct damage policies, and whether or not caused by the negligence of any person so released.

9. *Inspection of Books.* Owner shall have the right to inspect the books and records of Contractor at all reasonable times and to have the same audited at any time by auditors designated by Owner, to whatever extent may be required to determine the correctness of reimbursable items of cost hereunder.

10. *Terms of Payment.* Contractor shall submit a monthly invoice not later than the tenth day of each month setting forth all items of reimbursable cost incurred during the preceding calendar month, and its monthly fixed fee, together with such supporting documents as Owner may reasonably require, and such invoice shall be due and payable by Owner not later than ten (10) days after presentation.

11. *Force Majeure.* Either party shall be excused for failing to perform any obligation hereunder to the extent that its failure may result from causes beyond its reasonable power and control, and Contractor may suspend performance whenever and so long as there exists an unreasonable risk of liability of Contractor to third persons not covered by insurance.

12. *Non-assignability; Subcontracting.* This contract shall not be assignable in whole or in part by Contractor, nor shall any of the work be performed by subcontractors, without the prior written consent of Owner.

13. *Entire Agreement.* This contract sets forth the entire agreement between the parties.

IN WITNESS WHEREOF, the parties have executed this agreement as of the 1st day of August, 1959.

FIBREBOARD PAPER PRODUCTS CORPORATION

GENERAL COUNSEL'S EXHIBIT 11

FIBREBOARD PAPER PRODUCTS CORPORATION
Executive Offices • 475 Brannan Street
San Francisco 19, California

TO ALL EMERYVILLE EMPLOYEES July 30, 1959

Nearly every month the cost of manufacturing the products of American industry shoots up another couple of percentage points. In most industries, and Fibreboard is no exception, stiff competition makes it impossible to pass on these higher costs through increased prices. This "cost-price" squeeze has forced many companies, and again Fibreboard is no exception, to face the economic facts of life and control costs efficiently all along the line.

This cost control is vital to us at Fibreboard because it is one of the few ways to assure the company and its more than 6,000 employees a future of greater prosperity through more efficient service to its customers.

Here at Emeryville, the cost of doing maintenance work has grown steadily. Studies during the past two years have shown that maintenance of our facilities by an outside crew instead of by our own employees, would produce savings that would reduce the cost of our Emeryville products and make them more competitive.

Each of us is acutely aware of the implications of a decision to take this action. We have reached this decision only after long and careful study of all of the facts.

We are confident that maintenance employees affected by this action—who are members of highly skilled and specialized trades—will have little difficulty in finding new jobs in this time of great demand for skilled labor.

Fortunately, some of the employees affected will be able to share immediately in retirement benefits, which will provide them right away with some continuing income.

Additionally, we have prepared a program of termination allowances which would be distributed on a basis of length of service. For those who will share in retirement benefits, this

termination allowance would be an added contribution to their income.

J. P. CORNELL, Manager
Emeryville Floor Covering Plant
E. W. TORBOHN, Manager
Emeryville Insulation Plant
W. L. MAFFEY, Works Engineer
Emeryville Utilities Group
E. J. VAUGHT, Manager
Emeryville Paint Plant
S. F. FRIDELL, Manager
Emeryville Roofing Plant & Felt Mill

GENERAL COUNSEL'S EXHIBIT 12

July 31, 1959

Inasmuch as we have contracted out all powerhouse and maintenance work, we will no longer need your services. Here is the pay check due today and you will receive through the mails a termination allowance as shown on the personal statement memo.

Your pay check for this week will either be given to you at the close of the shift today or put in the mail tonight.

GENERAL COUNSEL'S EXHIBIT 13

PERSONAL STATEMENT FOR MR. _____
Earned Vacation Due $_____
Pro rata Vacation Granted (1/12-12/12) _____
Termination Allowance (____ weeks, which includes two (2) weeks' pay in lieu of notice) _____
Total $_____

PENSION STATUS
Estimated Monthly Retirement Income
1. As of August 1, 1959 $_____
2. At Normal Retirement (age 65) _____
Death Benefit $_____
Vested Interest: Yes____ No____
Deposits and Interest as of December 31, 1958 $_____

HOSPITAL/MEDICAL/LIFE INSURANCE COVERAGE
You have thirty-one (31) days in which to convert your group

coverage to an individual basis. During this period, your present coverage will remain in effect.
Please contact the Personnel Office if you have any questions.

GENERAL COUNSEL'S EXHIBIT 14

NOTICE TO MEDIATION AGENCIES

May 26, 1959

To: Regional Office: FEDERAL MEDIATION AND CONCILIATION SERVICE; and
To: STATE DEPARTMENT OF INDUSTRIAL RELATIONS
You are hereby notified that written notice of the proposed termination or modification of the existing collective bargaining contract was served upon and a dispute exists with the other party to this contract.

1. *(a)* Name of employer: FIBREBOARD PAPER PRODUCTS CORPORATION
   Address of establishment affected: 64th and Rollis Streets, Emeryville California. *(b)* Employer Official to communicate with: R. C. THUMANN, Director of Industrial Relations. Address: above.
2. *(a)* International union: UNITED STEELWORKERS OF AMERICA, Local 1304, AFL-CIO: x, Phone No: OL 4-2660
   Address of local union: 3637 San Pablo Ave., Emeryville, California. *(b)* Union Official to communicate with: LLOYD FERBER, Business Agent.
   Address:
3. Number of employees in bargaining unit or units in the negotiations: 56.
4. Nature of business of establishment affected:
   (a) Principal products or services rendered: Roofing, Paints, Etc. *(b)* Type of establishment: Manufacturing.
5. *(a)* Expiration date of contract: 7/31/59. *(b)* Contract date reopening: 5/26/59
6. Name of official filing this notice: WM. F. STUMPF. Title: Representative. Address: 610 16th St., Oakland 12, California. Phone No: TI 3-5466
   Check on whose behalf this notice is filed:
   Union Employer

Signature: WM. F. STUMPF

(Attach copies of any statement you wish to make to the Mediation Agencies.)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
[Caption Omitted]

REQUEST FOR ORAL ARGUMENT

The respondent FIBREBOARD PAPER PRODUCTS CORPORATION hereby requests permission to argue the above entitled matter orally before the Board in the event that the Board should grant the petitions for reconsideration presently under submission. This request is based upon the following:

On March 29, 1961, the Board, Member Fanning dissenting, made and issued its decision dismissing the Complaint.

On May 17, 1961, the charging party filed a Petition for Reconsideration, and on May 23, 1961, respondent filed its answer thereto. On June 7, 1961, General Counsel filed a Motion for Consideration and Clarification, and on June 13, 1961, respondent filed its answer thereto. The Board has not yet ruled on either the said petition or the said motion.

As pointed out in respondent's answers to the Petition for Reconsideration and Motion for Consideration, Member Fanning's dissent indicated that he was laboring under certain factual misapprehensions. Oral argument would be of value in removing any such misapprehensions that may exist in his mind or in the minds of new members of the Board.

For the foregoing reasons, we submit that if the Board should decide to reconsider the case, oral argument should be had before redecision of the merits.

Marion B. Plant
BROBECK, PHLEGER & HARRISON
Attorneys for Respondent
Fibreboard Paper Products
Corporation
111 Sutter Street
San Francisco 4, California

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

[Caption Omitted]

PETITION TO REOPEN RECORD FOR THE INTRODUCTION OF FURTHER EVIDENCE

The respondent FIBREBOARD PAPER PRODUCTS CORPORATION hereby petitions the Board, in the event that the Board should grant the requests for reconsideration presently under submission, to reopen the record in the above-entitled matter to allow respondent to introduce evidence pertaining to a reduction in the work force at respondent's Emeryville Plant. The evidence will show the following:

(1) Petitioner has ceased production of all floor covering materials except for a material called "Mastipave," Petitioner ceased production of printed floor covering in October 1960, ceased production of coating in May 1961, ceased production of linoleum in July 1961, and ceased production of compound in February 1962.

(2) Petitioner ceased the production of asphalt roofing at its Emeryville Plant in February 1962 and opened a new and modern plant for production of the same at Martinez, California. The only roofing operations still carried on at Emeryville are the production of felt and of granules.

(3) As a result of the foregoing changes, the number of production employees employed by petitioner at Emeryville has decreased from 737 on July 1, 1959, to 256 on July 1, 1962.

(4) As a result of the foregoing changes, the number of maintenance workers employed at Emeryville by the maintenance contractor has decreased to 37, and the number of maintenance workers performing work of a nature formerly performed by employees represented by the charging parties has decreased to 23. Because of impending completion of the work of demolishing facilities no longer in use, there will be further reductions within the next few days in the number of maintenance workers performing work of a nature formerly performed by employees represented by the charging parties.

(5) All of the foregoing changes which have oc-

curred were made, and those impending will be made, solely for business and economic reasons unrelated to the pendency of the instant proceedings, and are and will be permanent.

If the Board should decide to reconsider the case, and if such reconsideration should result in a decision that petitioner was guilty of a refusal to bargain, the said evidence will be pertinent to the question of the relief to be granted and particularly to the issues of reinstatement and back pay.

All of the said changes occurred subsequent to the hearing before the Trial Examiner in September 1959 and all but the cessation of production of printed floor covering occurred subsequent to the Board's original decision herein.

WHEREFORE, petitioner prays that in the event the Board grants the pending requests for reconsideration, the record be reopened and a further hearing had for the purpose of allowing petitioner to introduce the said evidence.

MARION B. PLANT
BROBECK, PHLEGER & HARRISON
By Marion B. Plant
GERARD D. REILLY
REILLY & WELLS
By Gerard D. Reilly

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

[Caption Omitted]

OPPOSITION TO PETITION TO REOPEN RECORD FOR THE INTRODUCTION OF FURTHER EVIDENCE

The charging parties, East Bay Union of Machinists, Local 1304 United Steelworkers of America, and United Steelworkers of America, respectfully request that the respondent's petition to reopen the record in this case be denied for the following reasons:

(1) The only evidence which respondent wishes to introduce is that the number of its production employees has decreased since the hearing before the Trial Examiner. That information, even if true, would in no way affect the

Board's determination whether respondent has committed unfair labor practices, nor what type of remedy is appropriate. Such information is relevant only to the calculation of reinstatement dates and amounts of back pay due individual employees, in a compliance proceeding before the Regional Director subsequent to the Board's decision. NLRB Rules and Regulations, §§102.52-102.59.

(2) Respondent's proposed evidence deals with occurrences dating as far back as two years ago, and, at their most recent, five months ago, yet respondent has not seen fit to bring them to the Board's attention until now. We respectfully submit that to reopen the record at this late date would serve no purpose but to delay resolution of this case, already several years old, and thereby further postpone granting of such relief as the Board may ultimately determine is appropriate.

WHEREFORE, the charging parties pray that respondent's petition to reopen the record be denied.

DAVID E. FELLER
ELLIOT BREDHOFF
MICHAEL H. GOTTESMAN
Feller, Bredhoff & Anker
1001 Connecticut Avenue, N. W.
Washington 6, D. C.
By David E. Feller
JAY DARWIN
IRWIN LEFF
Darwin, Rosenthal & Leff
68 Post St.
San Francisco, California

[fol. 171] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17275

EAST BAY UNION OF MACHINISTS, LOCAL 1304, UNITED STEELWORKERS OF AMERICA, AFL-CIO, and UNITED STEELWORKERS OF AMERICA, AFL-CIO, Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent,

FIBREBOARD PAPER PRODUCTS CORPORATION, Intervenor.

No. 17468

FIBREBOARD PAPER PRODUCTS CORPORATION, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent,

EAST BAY UNION OF MACHINISTS, LOCAL 1304, UNITED STEELWORKERS OF AMERICA, AFL-CIO, and UNITED STEELWORKERS OF AMERICA, AFL-CIO, Intervenors.

On Petitions To Review and Cross-Petition For Enforcement Of A Decision And Order Of The National Labor Relations Board

OPINION—Decided July 3, 1963

[fol. 172] Mr. Jerry D. Anker, with whom Messrs. David E. Feller, Elliot Bredhoff, and Michael H. Gottesman were on the brief, for petitioners in No. 17275 and intervenors in No. 17468.

Mr. Marion B. Plant, with whom Mr. Gerard D. Reilly was on the brief, for petitioner in No. 17468 and intervenor in No. 17275.

Mr. Melvin J. Welles, of the bar of the Court of Appeals of New York, *pro hac vice,* by special leave of court, with whom Messrs. Stuart Rothman, General Counsel at the time of argument, Dominick L. Manoli, Associate General Counsel, and Marcel Mallet-Prevost, Assistant General Counsel, National Labor Relations Board, were on the brief, for respondent. Mr. Herman Levy, Attorney, National Labor Relations Board, also entered an appearance for respondent.

Before DANAHER, BASTIAN and BURGER, Circuit Judges.

BURGER, Circuit Judge: These are consolidated petitions for review of an order of the National Labor Relations Board. Cross motions for intervention have been granted. In response, the Board seeks enforcement of its order.

Fibreboard Paper Products Corporation, petitioner in No. 17468, is engaged in the manufacture, sale and distribution of paint, industrial insulation, floor covering and related products, operating twenty plants in five states. East Bay Union of Machinists, Local 1304, United Steelworkers of America, AFL-CIO, petitioner in No. 17275, until the events described below, had been the exclusive bargaining agent of the unit of maintenance employees at Fibreboard's Emeryville, California, plant.[1] The Union [fol. 173] and the Company had had a history of collective bargaining dating from 1937. At the time of the events relevant to this case, the parties had a one year collective bargaining agreement terminating July 31, 1959. The contract provided for automatic renewal for another year unless one of the contracting parties gave sixty days notice of a desire to modify or terminate the contract. On May 26, 1959, the Union gave such a notice and sought to arrange a bargaining session with Company representatives. The Company was not cooperative in arranging a meeting and

[1] The employees in the unit included maintenance mechanics, electricians and helpers, working foremen, firemen and engineers employed in the powerhouse, and the storekeeper in the central supply and storeroom.

the representatives of the Company and the Union did not meet until July 27.

During the period when the Union was seeking to negotiate a new contract, the Company was considering contracting out its maintenance work to an independent contractor. By July 27, four days before the end of the contract term and approximately two months after the Union's notice, the Company had decided to contract out all its maintenance work then being performed by 73 men. A meeting with representatives of the Union was arranged the afternoon of that day. At this meeting the Union agents were handed copies of a letter from the Company which stated in pertinent part:

> For some time we have been seriously considering the question of letting out our Emeryville maintenance work to an independent contractor, and have now reached a definite decision to do so effective August 1, 1959.
>
> In these circumstances, we are sure you will realize that negotiation of a new contract would be pointless. However, if you have any questions, we will be glad to discuss them with you.

No negotiations were attempted during the remainder of that meeting. On July 30 another meeting was held at the Union's request for the purpose of bargaining about a new contract. At that time the Company representatives restated their position that they were not prepared to nego- [fol. 174] tiate with the Union on the question. On July 31, the employment of the 73 maintenance workers, including 50 represented by the Union, was terminated and employees of the subcontractor went on the job.

The Union filed charges against the Company and the Board's Regional Director issued a complaint alleging violations of Section 8(a)(1), 8(a)(3) and 8(a)(5) of the Labor Act. 29 U.S.C. §§ 158(a)(1), 158(a)(3), 158(a)(5). Hearings were held and the Trial Examiner filed his Intermediate Report recommending dismissal of the complaint. The Board accepted the Examiner's recommendations and dismissed the complaint. 130 NLRB 1558. The

General Counsel and the charging Union filed petitions for reconsideration which were granted. On reconsideration, the Board modified its original decision to the extent of finding that the Company had violated Section 8(a)(5) "by unilaterally subcontracting its maintenance without bargaining with the . . . [Union] over its decision to do so." The Board issued an appropriate cease and desist order in light of its findings and in addition, affirmatively ordered the Company to restore its maintenance operations and offer reinstatement with back pay to the displaced employees. The Board ordered that back pay be calculated from the date of the Board's supplemental decision and order to the date of the Company's offer of reinstatement to the employees in question. The Supplemental Decision and Order did not modify the original decision with respect to the dismissal of the charges under 8(a)(1) and 8(a)(3). 138 NLRB No. 67.

In its petition for review, the Company argues that (a) it had no duty to bargain about its decision to contract out the maintenance work performed by a unit of approximately 73 employees; and (b) there was no appropriate finding that it refused to bargain about its decision to contract out and that any such finding would not be supported by substantial evidence on this record. The Union [fol. 175] challenges (a) the Board's failure to find a violation of Section 8(a)(3) and (b) the Board's failure to make the remedial order of back pay operative to the date of termination of employment.

(1)

The record clearly shows that the Company met with the Union to announce that it had decided to contract out the maintenance work, and that it would not bargain on this decision. This position was consistent with the Company's belief that contracting out was exclusively a "management prerogative" about which it could take unilateral action without first bargaining to impasse with the Union. The Board's opinions indicate that a finding of refusal to bargain was made by the Board. There is substantial evidence to support the Board's conclusion that the Company refused to bargain.

(2)

The facts of this case present the situation where the implementation of a decision to contract out the maintenance work, prompted by economic motives, extinguished the entire collective bargaining unit by terminating the employment of all of the members in that unit. In its supplemental decision and order the Board held that Fibreboard was under a duty to bargain with the Union on the proposed subcontracting before it took unilateral action.

It is important to point out certain issues which are not raised by this appeal, in order to define the limits of the issue we are deciding. We are not asked to evaluate a proposal made by management during the course of bargaining to determine whether it relates to a mandatory subject of bargaining within the intendment of Section 8d of the Act, *National Labor Relations Board* v. *Borg-Warner*, 356 U.S. 342 (1958), nor are we asked to evaluate unilateral [fol. 176] action concerning conditions of employment taken during negotiations, *National Labor Relations Board* v. *Katz*, 369 U.S. 736 (1962); we are not asked to evaluate the propriety of unilateral action taken after negotiations have reached an impasse, *National Labor Relations Board* v. *Intercoastal Terminal Inc.*, 286 F.2d 954 (5th Cir. 1961), nor are we asked to resolve issues relating to the scope of an arbitration clause in a collective bargaining agreement, *United Steelworkers* v. *Warrior & Gulf Nav. Co.*, 363 U.S. 574 (1960).

Here the Company did not acknowledge that collective bargaining was essential as a preliminary to terminating the employment of an entire bargaining unit, nor did the employer bargain to impasse before taking unilateral action of contracting out all of the plant's maintenance work. Thus we are faced with the employer's contention that he was under no legal duty to bargain with the Union prior to contracting out the maintenance work. If the employer had the right unilaterally to terminate the employment of all employees making up a bargaining unit by contracting out the work, there would, of course, be no point in bargaining for a renewal of the existing contract. The work performed by its former employees would be performed by employees of a subcontractor.

The purpose of imposing legal duties upon employers to meet and bargain with the representatives of employees is to create a structure of industrial self-government for a particular plant arrived at by consensual agreement between management and employees within the framework of the statute. See *United Steelworkers* v. *Warrior & Gulf Nav. Co.*, 363 U.S. 574, 580-81 (1960). By guaranteeing employee participation in decisions relating to wages, hours, terms and conditions of employment, Congress made a determination that this would create an environment conducive to industrial harmony and eliminate costly industrial strife which interrupts commerce.

[fol. 177] In framing Section 8(d) of the Act, 29 U.S.C. § 158(d), Congress was incorporating the decisions of the Board and the Courts defining the duty to bargain collectively. The statutory definition of those subjects about which the parties were required to bargain was of necessity framed in the broadest terms possible: wages, hours, terms and conditions of employment. The use of this language was a reflection of the congressional awareness that the act covered a wide variety of industrial and commercial activity and a recognition that collective bargaining must be kept flexible without precise delineation of what subjects were covered so that the Act could be administered to meet changing conditions. Congress left it to the Board, in the first instance, to give content to the statutory language, subject to review by the courts. *Richfield Oil Corp.* v. *National Labor Relations Board*, 97 U.S.App.D.C. 383, 231 F.2d 717, *cert. denied*, 351 U.S. 909 (1956).

The employer's contention in essence is that its unilateral action was justified because it was motivated solely by economic necessity and that the Board's rejection of the Union's Section 8(a)(3) claims shows the absence of any anti-union animus. But the Board's final conclusions do not rest on a basis of improper motivation. It is not necessary to find an anti-union animus as a predicate for a conclusion that the employer violated Section 8(a)(5) which commands good faith bargaining on wages, hours and terms and conditions of employment. It is enough that management's reasons for its proposal might have been deemed satisfactory by and have been acceptable to the

Union. It is not necessary that it be likely or probable that the union will yield or supply a feasible solution but rather that the union be afforded an opportunity to meet management's legitimate complaints that its maintenance was unduly costly. By way of illustration: the union, after hearing management's side of the problem, might [fol. 178] concede the justice of the claims and agree to invoke union discipline to increase productivity and reduce costs. Specifically it might proffer a six months trial period in which either productivity would be increased with the existing force of 73 men or maintained with a reduced force to effect the economies desired by management.[2] It has been so often pointed out that no citation is called for that the obligation to bargain is not an obligation to agree. The basic concepts underlying the Labor Management Relations Act call for utilization of joint efforts at the bargaining table as a substitute for labor strife.

Having in mind the broad powers conferred on the Board by Congress and our limited scope of review, we conclude on this record that the Board was warranted in its determination that the employer violated Section 8(a)(5) by refusing to bargain before terminating the employment of all the members of its maintenance force.

(3)

The General Counsel's case in support of the Section 8(a)(3) charge rested on proof of overt acts from which it sought to persuade the Board to draw inferences of anti-union animus. The evaluation of such evidence is a process peculiarly within the seasoned experience of the Board and we see no basis for disturbing its finding that no Section 8(a)(3) violation was proven.

(4)

Finally the Union challenges the Board's action in dating the back pay remedy only from the date of the Board's

[2] Paradoxically the employer concedes that it would have been interested in possible solutions which the union might have offered but its course of action foreclosed negotiation at the threshold.

[fol. 179] Supplemental Decision and Order. The Union relies on *A.P.W. Products, Inc.*, 137 NLRB No. 7, enforced, —— F.2d —— (2d Cir. 1963). We think it sufficient to point out that in that case it was the Board which chose to modify its longstanding practice with regard to tolling of back pay between the Intermediate Report favorable to an employer and a subsequent reversal by the Board, and the Court of Appeals enforced the order. In the present case the Board has framed what it deems to be an appropriate remedy and we see no basis to depart from the general rule of allowing the Board wide latitude in shaping remedies. See *National Labor Relations Board* v. *Seven-Up Bottling Co.*, 344 U.S. 344 (1953); *Phelps-Dodge Corp.* v. *National Labor Relations Board*, 313 U.S. 177 (1941); *Virginia Electric & Power Co.* v. *National Labor Relations Board*, 319 U.S. 533 (1943).

The Board's order will be enforced.

[fol. 180] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,275

EAST BAY UNION OF MACHINISTS, LOCAL 1304, UNITED STEELWORKERS OF AMERICA, AFL-CIO, and UNITED STEELWORKERS OF AMERICA, AFL-CIO, Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent,

FIBREBOARD PAPER PRODUCTS CORPORATION, Intervenor.

No. 17,468

FIBREBOARD PAPER PRODUCTS CORPORATION, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent,

EAST BAY UNION OF MACHINISTS, LOCAL 1304, UNITED STEELWORKERS OF AMERICA, AFL-CIO, and UNITED STEELWORKERS OF AMERICA, AFL-CIO, Intervenors.

On Petitions to Review and a Cross-Petition for Enforcement of an Order of the National Labor Relations Board.

Before: Danaher, Bastian and Burger, Circuit Judges.

JUDGMENT—July 3, 1963

These cases came on to be heard on the record from the National Labor Relations Board, and on petitions to review and a cross-petition for enforcement of, the order of the National Labor Relations Board, and were argued by counsel.

On Consideration Whereof, it is ordered and adjudged by this court that the order of the National Labor Relations Board on review in these cases will be enforced.

Pursuant to Rule 38(b) the National Labor Relations Board shall within 10 days hereof serve and file a proposed enforcement decree consistent with the opinion of this court.

Per Curiam.

[fol. 181]

IN UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Title omitted]

ORDER EXTENDING TIME FOR FILING PETITION FOR REHEARING AND STAYING MANDATE—July 15, 1963

On consideration of appellant's motions to stay issuance of mandate pending filing of a petition for rehearing on or before July 31, 1963, and to extend the time for filing a petition for rehearing from July 18, 1963, to July 31, 1963, said motions being consented to by the parties, it is

Ordered that the motions be granted.

[fol. 182]

No. 17468

FIBREBOARD PAPER PRODUCTS CORPORATION, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent,

EAST BAY UNION OF MACHINISTS, LOCAL 1304, UNITED STEELWORKERS OF AMERICA, AFL-CIO and UNITED STEELWORKERS OF AMERICA, AFL-CIO, Intervenors.

CLERK'S MEMORANDUM

7/27/63 25—Petitioner's Petition for Rehearing filed.

[fol. 183] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
Nos. 17,275 and 17,468

[Titles omitted]

Before: Danaher, Bastian, and Burger, Circuit Judges, in Chambers.

ORDER DENYING PETITION FOR REHEARING—
September 27, 1963

On consideration of the petition of Fibreboard Paper Products Corporation for rehearing, it is

Ordered by the court that the aforesaid petition is hereby denied.

Per Curiam.

[fol. 184] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
No. 17275

EAST BAY UNION OF MACHINISTS, LOCAL 1304, UNITED STEELWORKERS OF AMERICA, AFL-CIO, and UNITED STEELWORKERS OF AMERICA, AFL-CIO, Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent,

FIBREBOARD PAPER PRODUCTS CORPORATION, Intervenor.

No. 17468

FIBREBOARD PAPER PRODUCTS CORPORATION, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent,

EAST BAY UNION OF MACHINISTS, LOCAL 1304, UNITED STEELWORKERS OF AMERICA, AFL-CIO, and UNITED STEELWORKERS OF AMERICA, AFL-CIO, Intervenors.

PROPOSED DECREE—Filed October 10, 1963

Before: Danaher, Bastian and Burger, Circuit Judges.

This cause came on to be heard upon petitions of East Bay Union of Machinists, Local 1304, United Steelworkers of America, AFL-CIO and United Steelworkers of America, [fol. 185] AFL-CIO, (No. 17275) and Fibreboard Paper Products Corporation, (No. 17468) to review and modify an order of the National Labor Relations Board dated September 13, 1962, directed against Fibreboard Paper Products Corporation, Emeryville, California, its officers, agents, successors and assigns, and upon the Board answers and petition to enforce said order. The Court heard argument of respective counsel on April 29, 1963 and has considered the briefs and the transcript of record filed in this cause. On July 3, 1963, the Court, being fully advised in the premises, handed down its decision granting enforcement of the Board's said order. In conformity therewith,

It Is Hereby Ordered, Adjudged and Decreed, by the United States Court of Appeals for the District of Columbia Circuit, that the said order of the National Labor Relations Board in said proceeding be, and it hereby is, enforced, and that Fibreboard Paper Products Corporation,

its officers, agents, successors and assigns, abide by and perform the directions of the Board in said order contained.

John A. Danaher, Judge, United States Court of Appeals for the District of Columbia Circuit.

Warren E. Burger, Judge, United States Court of Appeals for the District of Columbia Circuit.

Walter M. Bastian, Judge, United States Court of Appeals for the District of Columbia Circuit.

[fol. 186] Certificate of Service (omitted in printing).

[fol. 192] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 193]

SUPREME COURT OF THE UNITED STATES

No. 610, October Term, 1963

FIBREBOARD PAPER PRODUCTS CORPORATION, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD, et al.

ORDER ALLOWING CERTIORARI—January 6, 1964

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted limited to Questions 1 and 3 presented by the petition which read as follows:

"1. Was Petitioner required by the National Labor Relations Act to bargain with a union representing some of its employees about whether to let to an independent contractor for legitimate business reasons the performance of certain operations in which those employees had been engaged?

"3. Was the Board, in a case involving only a refusal to bargain, empowered to order the resumption of operations which had been discontinued for legitimate business reasons and reinstatement with back pay of the individuals formerly employed therein?"

The case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Goldberg took no part in the consideration or decision of this petition.